

**Manitoba Securities Commission  
Notice 2001-33**

**APPLICATION FOR RECOGNITION OF MARKET REGULATION SERVICES  
INC. - NOTICE AND REQUEST FOR COMMENTS**

Market Regulation Services Inc. (RS Inc.) has applied to be recognized as a self-regulatory organization (SRO) in Alberta, British Columbia, Manitoba, Ontario and Québec (the “Recognizing Regulators”). RS Inc. will operate as a regulatory services provider under the Alternative Trading System (ATS) proposal and will administer and enforce trading rules for the marketplaces that retain its services.

The Recognizing Regulators are publishing for comment the application for recognition of RS Inc. (the “Application”) and the following additional related documents. The full text of these documents is on the Ontario Securities Commission’s website at [www.osc.gov.ca](http://www.osc.gov.ca).

1. Proposed criteria for recognition – In the Application, RS Inc. responded to each of the recognition criteria prepared by the Recognizing Regulators. Following the comment process and resolution of all outstanding issues, each Recognizing Regulator expects to issue an order recognizing RS Inc. with terms and conditions based on the recognition criteria.
2. Rules and Policies - The Universal Market Integrity Rules (UMIRs) are subject to approval by the Recognizing Regulators. The exchanges that contract with RS Inc. will adopt the UMIRs and RS Inc. will also adopt the UMIRs to govern the activities of ATSS that contract with it.
3. Oversight program - The Recognizing Regulators will establish an oversight program for RS Inc. under a Memorandum of Understanding (MOU). The MOU includes a protocol for the joint review and approval of rules, policies and other similar instruments of RS Inc., the filing of significant changes to RS Inc.’s operations, and the performance of examinations of RS Inc.’s regulation services.

**A. Background**

In July 2000, the Canadian Securities Administrators (CSA) published the Alternative Trading System (ATS) proposal without taking a position on how market regulation should be performed for the equity market. The request for comment invited industry participants to consider possible solutions. The CSA made it clear that it was willing to participate in discussions but was looking to the industry to propose alternatives for market regulation in the equity market.

In response to the market regulation aspect of the request for comment, the Toronto Stock Exchange Inc. (TSE) and the Investment Dealers Association of Canada (IDA) jointly proposed to create RS Inc. to perform market regulation for the equity market.

## **B. Recognition of RS Inc.**

Staff of RS Inc. and of the Recognizing Regulators have engaged in extensive discussions leading to the publication of the recognition criteria and the Application.

There are proposed recognition criteria for each of the following areas:

1. Corporate Governance
2. Fees
3. Access
4. Financial Viability
5. Capacity to Perform Regulatory Functions
6. Capacity and Integrity of Systems
7. Purpose of Rules
8. Rules and Rule-Making
9. Financial Statements
10. Discipline Rules
11. Due Process
12. Information Sharing
13. Additional Information and Compliance with Oversight

RS Inc. must meet each of the recognition criteria to the satisfaction of the Recognizing Regulators.

### **Specific areas for comment**

**We are seeking comments on all aspects of the proposed criteria for recognition and the Application.** We also request specific comment on the matters identified below and we have highlighted certain other important aspects of RS Inc.'s Application.

#### 1. Conflicts of Interest

In the Notice published with the ATS Rules (published by the Manitoba Commission on August 30), the Recognizing Regulators indicated that they were examining the Application to determine if it was not contrary to the public interest to recognize RS Inc. as an SRO. Among the factors considered was "the ability of both owners of RS Inc. to avoid or manage situations of conflicts of interest relating to the self-regulatory obligations of RS Inc."

Initially, both the TSE and IDA would own 50% of RS Inc. This initial ownership structure could evolve with the addition of other marketplaces if and when they reach certain levels of Canadian equity market share. Corporate governance rules are also proposed in order to ensure the appointment of "independent directors" and other marketplaces' representatives on the initial RS Inc. Board (see Section 2 below).

Question 1: Do the proposed ownership structure and corporate governance rules of RS Inc. avoid or adequately manage conflicts of interest related to its status as a self-regulatory organization?

2. Corporate Governance

*Calculation*

The initial RS Inc. Board will be composed of 11 directors: 5 independent directors; 5 non-independent directors and the president of RS Inc. who will be deemed to be neither independent nor non-independent. The TSE and the IDA will each appoint 2 non-independent directors. The fifth non-independent director, who will be deemed to be neither a representative of the TSE nor of the IDA, will be an individual with experience with the Canadian venture capital market appointed jointly by the TSE and the IDA. However, if CDN X becomes regulated by RS Inc. and reaches or exceeds a “Market Share” of 10% of the Canadian equity securities market, CDN X will be entitled to nominate the fifth non-independent director. “Market Share” is calculated on the trading activity of the previous calendar year, based on 25% trading value, 25% trading volume and 50% number of trades. This calculation is used for various purposes in the Application. We request comment on whether the calculation for purposes of determining Market Share is appropriate.

Question 2: Is the calculation for determining Market Share appropriate (i.e., 25% trading value, 25% trading volume and 50% number of trades)?

*ATS representation*

RS Inc. proposes that its board include at least one ATS representative at all times. This representative will be considered to be an independent director until such time as the ATS that such individual is associated or affiliated with becomes a marketplace regulated by RS Inc. or the individual becomes a marketplace participant. Thereafter, the representative of ATSS will be considered to be a non-independent director. RS Inc. proposes to permit each ATS that attains a 10% Market Share (as defined above) to appoint a representative to the Board.

Question 3: Does RS Inc.’s proposal for ensuring that there is at least one ATS representative on its board at all times do so appropriately?

*Definition of Independent Director*

RS Inc. proposes to define “independent director” as excluding a marketplace, a marketplace participant, a shareholder of RS Inc. and an affiliated entity of any of the above. The proposal to exclude marketplace participants from the definition of “independent director” has the effect of excluding both dealer and non-dealer subscribers of an ATS. For example, individuals who are subscribers of an ATS would not be

eligible to be independent directors of RS Inc. We request comment on the appropriateness of the criteria for an “independent director”.

RS Inc. also proposes to include as a guideline for the selection of independent directors that its Governance Committee consider any affiliations the candidate has had with any exchange, quotation and trade reporting system or ATS in determining whether the candidate is qualified to act as an independent director.

Question 4: Is the definition of “independent director” appropriate? Should there be a “cooling off” period before an individual who has been associated with any exchange, quotation and trade reporting system or ATS can be considered eligible to serve as an independent director of RS Inc.?

### 3. Fees

RS Inc.’s proposal states that RS Inc. will allocate the cost of regulation market-by-market. In other words, the fees for ATSs that facilitate trading in securities listed on an exchange in Canada will be based on RS Inc.’s cost of regulating that Canadian exchange and any ATSs trading that exchange’s listed securities. For example, an exchange-traded security would have the same cost of regulation whether it is traded on an exchange or on an ATS. The fee model may raise issues of cross-subsidization between the ATS and the exchange where the securities are listed and we need to ensure that the proposed fee model is not a barrier to entry for ATSs.

Question 5: Please comment on the proposed fee model, allocating costs on a market-by-market basis and, in particular, whether it would create a barrier to entry for ATSs.

ATSs may also trade foreign securities. RS Inc. proposes that for determining fees, it will consider foreign securities not traded on a Canadian exchange as a distinct market. RS Inc. will base the fees charged to ATSs that facilitate trading in securities listed or quoted only on a foreign exchange on RS Inc.’s cost of regulating those securities. A security listed only on a foreign exchange might have a substantially different cost of regulation from a security listed on a Canadian exchange.

Question 6: Is the fee model proposed by RS Inc. fair and reasonable with respect to allocating costs to ATSs that trade foreign securities?

In addition, the TSE will provide certain services to RS Inc. (such as information systems) based on cost plus mark-up of up to 15%. RS Inc. retained an independent consultant to review its proposed cost allocation methodology and, in general, the report concludes that RS Inc.’s overall cost allocation model is reasonable. However, RS Inc. has not yet finalized its budget. RS Inc. has agreed to provide a report on cost allocation by November 10, 2001, once it has finalized its budget.

The TSE proposes to allocate the full cost of these services to RS Inc. and add a surcharge on each allocation.

Question 7: Please comment on whether a surcharge of up to 15% on the cost of the services the TSE will provide to RS Inc. is appropriate.

#### 4. Access

RS Inc. proposes to require each marketplace that contracts with it to have systems in place that meet its requirements for surveillance and reporting. This means that marketplaces would have to provide data feeds to RS Inc. in STAMP format or in such other format (including FIX format) as may be required by RS Inc. from time to time.

Question 8: What would be the approximate cost to an ATS of providing data in STAMP format initially? What would be an appropriate phase-in period for RS Inc. to accept data in FIX format?

RS Inc. also proposes that all marketplaces give RS Inc. staff access to their systems to implement regulatory decisions such as halting stocks, releasing stock freezes, etc.

Question 9: Please comment on whether it is appropriate for RS Inc. to require that a marketplace give RS Inc. staff access to its systems to implement regulatory decisions.

#### 5. Financial Viability

RS Inc. will be a not-for-profit organization. At start-up, the TSE and the IDA will provide RS Inc. funding through a long-term loan facility. RS Inc. proposes to repay this debt over several years and it will constitute part of the operating expenses to be recovered from marketplaces or marketplace participants. The loan will cover RS Inc.'s start-up operation costs. RS Inc. will disclose the terms of the loan facility once details have been finalized.

#### 6. Capacity and Integrity of Systems

At least initially, RS Inc. intends to use the TSE's surveillance systems.

### **Universal Market Integrity Rules**

The CSA published the UMIRs for comment on April 20, 2001<sup>1</sup> and received approximately 25 comment letters. The UMIRs are a joint initiative of the TSE and CDNX.

Several commenters raised issues concerning the applicability of the UMIRs to marketplaces other than equity auction marketplaces (such as the TSE and CDNX).

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<sup>1</sup> See CSA Request for Comment 23-401.

There were also comments concerning particular aspects of the rules such as the scope of authority. Staff are still in the process of assessing the comment letters received.

RS Inc. intends to adopt the UMIRs as its "market integrity" trading rules. **The Recognizing Regulators have not approved the proposed UMIRs published with this notice.** The Recognizing Regulators will be reviewing and approving the final version of the UMIRs, including any changes from the version published on April 20, 2001, in connection with the recognition of RS Inc.

### **Oversight Program**

We are publishing the MOU and other documents relating to the oversight program for RS Inc.

### **C. Comment Process**

You are asked to provide your comments in writing and to send them on or before **November 9, 2001** to all of the CSA listed below in care of the OSC, in duplicate, as indicated below:

British Columbia Securities Commission  
Alberta Securities Commission  
The Manitoba Securities Commission  
Ontario Securities Commission

c/o John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1903, Box 55  
Toronto, Ontario M5H 3S8  
E-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

Please also send your submission to the Commission des valeurs mobilières du Québec as follows:

Denise Brosseau, Secretary  
Commission des valeurs mobilières du Québec  
800 Victoria Square  
Stock Exchange Tower  
P.O. Box 246, 22nd Floor  
Montréal, Québec H4Z 1G3  
E-mail: [denise.brosseau@cvmq.com](mailto:denise.brosseau@cvmq.com)

We request that you submit a diskette containing your submission (in DOS or Windows format, preferably WordPerfect). The confidentiality of submissions cannot be

maintained because securities legislation in certain provinces requires that a summary of written comments received during the comment period be published.

Following the comment period, staff of the Recognizing Regulators will consider the comments received on the proposed criteria for recognition, the Application and the related documents. If staff of the Recognizing Regulators are satisfied that RS Inc. meets the criteria for recognition, they will recommend that their Commissions recognize RS Inc. as an SRO. Recognition will take the form of a recognition order with terms and conditions generally in the form of those attached to this notice.

If you have questions, you may contact:

Louyse Gauvin  
British Columbia Securities Commission  
Special Advisor to the Chair  
(604) 899-6538 or (800) 373-6393 (in B.C.)

Meg Tassie  
British Columbia Securities Commission  
Advisor, Capital Market Regulation  
(604) 899-6819 or (800) 373-6393 (in B.C.)

Glenda Campbell  
Vice-Chair  
Alberta Securities Commission  
(403) 297-4230

Cindy Petlock  
Ontario Securities Commission  
Manager, Market Regulation  
(416) 593-2351

Susan Greenglass  
Ontario Securities Commission  
Legal Counsel, Market Regulation  
(416) 593-8140

Diane Joly,  
Directrice de la recherche et du développement des marchés  
Commission des valeurs mobilières du Québec  
(514) 940 2199 (ext. 4552)

Pierre Godin  
Conseiller spécial à la présidence,  
Commission des valeurs mobilières du Québec  
(514) 940 2199 (ext. 4541)

Doug Brown  
Counsel & Director  
Manitoba Securities Commission  
(204) 945-0605





Industry Canada

Industrie Canada

**Certificate  
of Incorporation**

**Canada Business  
Corporations Act**

**Certificat  
de constitution**

**Loi canadienne sur  
les sociétés par actions**

Market Regulation Services Inc.

Services de Réglementation du Marché Inc.

394933-8

\_\_\_\_\_  
Name of corporation-Dénomination de la société

\_\_\_\_\_  
Corporation number-Numéro de la société

I hereby certify that the above-named corporation, the articles of incorporation of which are attached, was incorporated under the *Canada Business Corporations Act*.

Je certifie que la société susmentionnée, dont les statuts constitutifs sont joints, a été constituée en société en vertu de la *Loi canadienne sur les sociétés par actions*.

Director - Directeur

September 21, 2001 / le 21 septembre 2001

Date of Incorporation - Date de constitution



Industry Canada

Industrie Canada

ELECTRONIC TRANSACTION  
REPORT

RAPPORT DE LA TRANSACTION  
ÉLECTRONIQUE

Canada Business  
Corporations Act

Loi canadienne sur les  
sociétés par actions

ARTICLES OF  
INCORPORATION  
(SECTION 6)

STATUTS CONSTITUTIFS  
(ARTICLE 6)

Processing Type - Mode de Traitement: E-Commerce/Commerce-É

1. Name of Corporation - Dénomination de la société  
Market Regulation Services Inc.  
Services de Réglementation du Marché Inc.

2. The place in Canada where the registered office is to be situated -  
Lieu au Canada où doit être situé le siège social  
Location/Place: CITY OF TORONTO  
  
Province: ON

3. The classes and any maximum number of shares that the corporation is authorized to issue -  
Catégories et tout nombre maximal d'actions que la société est autorisée à émettre  
SEE ATTACHED ANNEX / VOIR L'ANNEXE CI-ATTACHÉE 'A'

4. Restrictions, if any, on share transfers - Restrictions sur le transfert des actions, s'il y a lieu  
SEE ATTACHED ANNEX / VOIR L'ANNEXE CI-ATTACHÉE 'B'

5. Number (or minimum and maximum number ) of directors - Nombre ( ou nombre minimal et maximal ) d'administrateurs  
  
Minimum: 3 Maximum: 25

6. Restrictions, if any, on business the corporation may carry on -  
Limites imposées à l'activité commerciale de la société, s'il y a lieu  
SEE ATTACHED ANNEX / VOIR L'ANNEXE CI-ATTACHÉE 'C'

7. Other provisions, if any - Autres dispositions, s'il y a lieu  
SEE ATTACHED ANNEX / VOIR L'ANNEXE CI-ATTACHÉE 'D'

8. Incorporators - Fondateurs

Names(s) - Nom(s)

Address (including postal code) - Adresse (inclure le code postal)

Signature

TOM ATKINSON

THE EXCHANGE TOWER, 2 FIRST CANADIAN PLACE, TORONTO, ONTARIO, TOM ATKINSON  
CANADA, M5X 1J2

Canada

## ANNEX/ANNEXE A

An unlimited number of Common shares. The Common shares shall have attached thereto the rights, privileges, restrictions and conditions set forth below:

### Section 1.1 Notices and Voting

The holders of the Common shares shall be entitled to receive notice of and to attend and vote at all meetings of holders of Common shares of the Corporation (except where the holders of a specified class are entitled to vote separately as a class as provided in the Canada Business Corporations Act), and each Common Share shall confer the right to one vote in person or by proxy at all meetings of shareholders of the Corporation.

### Section 1.2 Dividends

The Corporation shall not declare dividends or make any other distributions to the holders of the Common shares.

### Section 1.3 Liquidation, Dissolution and Winding-up

In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the holders of the Common shares shall only be entitled, on a pro rata basis for each Common share, to direct the Corporation to transfer the remaining property of the Corporation in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other amounts in respect of a return of capital or distribution of assets of the Corporation for the purpose of winding-up its affairs to such non-profit organization(s) as such holders may specify, provided that such specified organization(s) shall have objects similar to those of the Corporation and shall be exempt from tax.

ANNEX/ANNEXE B

Subject to the share transfer restrictions set forth in a shareholders' agreement signed by all shareholders of the corporation, no share shall be transferred without the consent of the holders of shares to which are attached more than 50% of the voting rights attaching to all shares for the time being outstanding entitled to vote at such time expressed by a resolution passed by such shareholders at a meeting duly called and constituted for that purpose or by an instrument or instruments in writing signed by all of such shareholders.

ANNEX/ANNEXE C

In no event shall the purpose of the organization and operation of the corporation include profit.

ANNEX/ANNEXE D

- (a) The number of shareholders of the Corporation, exclusive of persons who are in its employment and exclusive of persons who, having been formerly in the employment of the Corporation, were, while in that employment, and have continued after the termination of that employment to be, shareholders of the Corporation, is limited to not more than 50, 2 or more persons who are the joint registered owners of 1 or more shares being counted as 1 shareholder;
- (b) Any invitation to the public to subscribe for any securities of the Corporation is prohibited;
- (c) The Corporation shall not declare dividends or make any other distributions to its shareholders;
- (d) In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the Corporation shall, upon the direction of its shareholders, transfer the remaining property of the Corporation in the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, or any other amounts in respect of a return of capital or distribution of assets of the Corporation for the purpose of winding-up its affairs to such non-profit organization(s) as the shareholders may specify, provided that such specified organization(s) shall have objects similar to those of the Corporation and shall be exempt from tax. If the Corporation has not received such shareholder direction prior to the day which is six months after the date of the directors' resolution in respect of such liquidation, dissolution or winding-up of the Corporation (or, if involuntary, prior to the day which is six months from the date of the winding-up order or similar order) then the amounts referred to above shall be transferred to one or more of the non-profit organizations registered under the Income Tax Act (Canada), as the same may be amended, restated or re-enacted from time to time, which are members or otherwise part of the United Way of Greater Toronto or any successor to such organization; and
- (e) Subject to the restrictions set forth in a shareholders' agreement signed by all shareholders of the corporation, the directors may appoint one or more directors, who shall hold office for a term expiring not later than the close of the next annual meeting of shareholders, but the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual meeting of shareholders.

DRAFT: September 28, 2001

## BY-LAW NO. 1

A By-law relating generally to the transaction of the business and affairs of  
Market Regulation Services Inc.

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BE IT ENACTED as a By-law of the Corporation as follows:

**ARTICLE 1  
INTERPRETATION**

**Section 1.1 Interpretation.**

Unless otherwise defined or interpreted, every term used in this By-law that is:

- (a) defined or interpreted in the Act has the meaning ascribed to in that Act;
- (b) defined or interpreted in section 1 of the Securities Act has the meaning ascribed to in that section; and
- (c) defined or interpreted in the Universal Market Integrity Rules has the meaning ascribed to in that section.

**Section 1.2 Definitions.**

(1) In this By-law, unless the subject matter or context otherwise requires:

**“Access Person”** means all Participants and all other persons who have been granted trading access to marketplace.

**“Act”** means the *Canada Business Corporations Act*, R.S.C. 1985 c. C-44, as amended from time to time.

**“Affiliate”** has the meaning specified in the Securities Act.

**“Annual Operating Plan”** has the meaning specified in Section 2.6.

**“Applicable Securities Legislation”** means the securities legislation, including the regulations, rules, instruments, policies, rulings and orders applicable in the jurisdictions in which the Corporation has been recognized or approved as a regulation services provider.

**“appoint”** includes **“elect”** and vice versa.

**“Articles”** means the certificate and articles of incorporation of the Corporation dated September 21, 2001 as such Articles may from time to time be amended, replaced or superseded.

**“ATS”** has the meaning assigned to that term in National Instrument 21-101.

**“Board”** means, at any time, the board of directors of the Corporation constituted in accordance with the provisions of the By-laws and **“Director”** means any member who has been elected or appointed to the Board in accordance with the provisions of the By-laws.

**“By-law”** means this by-law and all other by-laws of the Corporation, as amended, supplemented and in effect from time to time.

**“Canadian Securities Administrators”** means the applicable securities commissions (or any successor regulatory authorities thereto) in the jurisdictions in which the Corporation has been recognized or approved as a regulation services provider.

**“CDNX”** means the Canadian Venture Exchange Inc.

**“cheque”** includes a bank draft.

**“Commissions”** means the securities commissions (or any successor regulatory authorities thereto) in the jurisdictions in which the Corporation has been recognized or approved as a regulation services provider.

**“Corporation”** means Market Regulation Services Inc.

**“day”** means a clear day and a period of days shall be deemed to commence the day following the event that began the period and shall be deemed to terminate at midnight of the last day of the period except that if the last day of the period falls on a Sunday or holiday the period shall terminate at midnight of the day next following that is not a Sunday or holiday.

**“Effective Date”** means the effective date of the Articles.

**“IDA”** means The Investment Dealers Association of Canada.

**“Independent Director”** means a director of RS Inc. who is not an associate, director, officer or employee of:

- (a) a marketplace;
- (b) an Access Person;
- (c) a shareholder of RS Inc.; or
- (d) an affiliated entity of any person described in clauses (a), (b) or (c),

provided that a person shall not be precluded from qualifying as an Independent Director if such person serves as a director of a marketplace,

Access Person or shareholder of RS Inc. but does not hold, directly or indirectly, any ownership or beneficial interest in, or act as an employee or officer of, the marketplace, Access Person or shareholder.

**“insider”** means a person who is an insider of an issuer for the purpose of applicable securities legislation.

**“listed security”** means a security listed or quoted on a marketplace.

**“marketplace”** has the meaning assigned to that term in National Instrument 21-101.

**“non-Independent Director”** means any Director of the Corporation who is not an Independent Director.

**“Shareholders’ Meeting”** includes an annual Shareholders’ Meeting and a special Shareholders’ Meeting.

**“ordinary resolution”** means a resolution passed by a majority of the votes cast by the Shareholders who voted in respect of that resolution or signed by all of the Shareholders entitled to vote on that resolution.

**“Participant”** has the meaning assigned to that term in the Universal Market Integrity Rules.

**“person”** includes any corporation, incorporated association, incorporated syndicate or other incorporated organization.

**“recorded address”** means in the case of a Shareholder, the Shareholder’s address as recorded in the securities register; and in the case of joint Shareholders the address appearing in the securities register in respect of such joint holding or the first address so appearing if there are more than one; in the case of an officer, auditor or member of a committee of the Board, his or her latest address as recorded in the records of the Corporation; and, in the case of a Director, his or her latest address as recorded in the records of the Corporation or in the most recent notice filed under the Act, whichever is the more current.

**“regulation services provider”** has the meaning specified in National Instrument 21-101 – Marketplace Operation issued by the Canadian Securities Administrators

**“resident Canadian”** means an individual who is:

- (a) a Canadian citizen ordinarily resident in Canada;

- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a class of persons prescribed by the regulations under the Act, or
- (c) a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily residents in Canada for more than one year after the time at which he first became eligible to apply for Canadian citizenship.

**“Rules and Regulations”** means the articles, By-laws, rules, regulations, policy statements, forms, guidelines, decisions, rulings, orders, instructions, directions, notices and similar instruments of or adopted by the Corporation (including by any committee or officer of the Corporation or other person so authorized) and including the Universal Market Integrity Rules, as amended, supplemented and in effect from time to time.

**“Securities Act”** means the *Securities Act*, R.S.O. 1990, c. S.5 as amended from time to time.

**“Share”** means any share in the capital of the Corporation, as described in the Articles.

**“Shareholder”** means any Person who holds Shares in the Corporation at a particular time.

**“Shareholders’ Agreement”** means the agreement dated as of ● among the Shareholders of the Corporation, as amended from time to time.

**“signing officer”** means, in relation to any instrument, any person authorized to sign the same on behalf of the Corporation by or pursuant to section 2.4.

**“special Shareholders’ Meeting”** includes a meeting of any class or classes of Shareholders and a special meeting of all Shareholders entitled to vote at an annual Shareholders’ Meeting.

**“special resolution”** means a resolution passed by a majority of not less than two thirds of the votes cast by the Shareholders who voted in respect of that resolution or signed by all of the Shareholders entitled to vote on that resolution.

**“TSE”** means The Toronto Stock Exchange Inc.

**“Universal Market Integrity Rules”** means the Corporation’s Universal Market Integrity Rules, as amended from time to time.

- (2) The division of this By-law into separate articles, sections, subsections and clauses, the provision of a table of contents and index thereto, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this By-law.
- (3) The use of the words “hereof”, “herein”, “hereby”, “hereunder” and similar expressions indicate the whole of the By-law and not only the particular section in which the expression is used.
- (4) Grammatical variations of any defined term have similar meanings; words importing the singular number shall include the plural and vice versa; words importing the masculine gender shall include the feminine and neuter genders.
- (5) Reference to any statute shall include any enactment that may be substituted therefore as amended from time to time, and any reference herein to any section or subsection of a statute shall be deemed to be a reference to the section or subsection as at the time in question amended or supplemented or to the successor if the same has been repealed.
- (6) All times mentioned in this By-law shall be local time in Toronto on the date concerned, unless the subject matter or context otherwise requires.

## **ARTICLE 2 BUSINESS OF THE CORPORATION**

### **Section 2.1 Registered Office.**

The registered office of the Corporation shall be in the municipality or geographic township within Ontario initially specified in the Articles and thereafter as the Shareholders may from time to time determine by special resolution and at such location therein as the Board may from time to time determine by resolution.

### **Section 2.2 Corporate Seal.**

Until changed by the Board, the corporate seal of the Corporation shall be in the form impressed hereon.

### **Section 2.3 Financial Year.**

Until changed by the Board, the financial year of the Corporation shall end on the last day of December in each year.

### **Section 2.4 Execution of Instruments.**

Deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the Corporation by any two of the

following: chair of the Board, president, vice-president, secretary, treasurer, assistant secretary or assistant treasurer, or the holder of any other office created by By-law or by resolution of the Board. In addition, the Board may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed. Any signing officer may affix the corporate seal to any instrument requiring the same, but it is not necessary to bind the Corporation.

#### **Section 2.5 Banking Arrangements.**

The banking business of the Corporation including, without limitation, the borrowing of money and the giving of security therefor, shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the Board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the Board may from time to time prescribe or authorize.

#### **Section 2.6 Annual Operating Plan.**

- (1) The Board shall cause a draft Annual Operating Plan to be prepared for each Financial Year by management of the Corporation for consideration by the Board and the Shareholders no later than prior to the beginning of such Financial Year. The draft annual operating plan shall be prepared in accordance accounting principles generally accepted in Canada as recommended in the Handbook of the Canadian Institute of Chartered Accountants and shall contain a detailed monthly financial budget. Such budget shall consist of a *pro forma* balance sheet, income statement and statement of changes in financial position of the Corporation for such Financial Year, shall include comparison statements from the previous Financial Year, shall be accompanied by a statement of the nature and amount of all capital expenditures to be incurred during such Financial Year, and shall be supported by the explanations, notes and information upon which the projections underlying the Annual Operating Plan have been based.
- (2) The draft Annual Operating Plan, as reviewed and approved by the Board and the Shareholders with such amendments and modifications as they determine appropriate, shall become the Annual Operating Plan for such Financial Year. In the event that the Board or the Shareholders are unable to settle and approve an Annual Operating Plan in whole or in part prior to the commencement of a Financial Year, the expenditure programme contained in the existing Annual Operating Plan shall continue to apply to the extent of such disagreement until a complete Annual Operating Plan is approved by the Board and the Shareholders.



### **Section 2.7 Voting Rights In Other Bodies Corporate.**

The signing officers of the Corporation may execute and deliver proxies and arrange for the issuance of voting certificates or other evidence of the right to exercise the voting rights attaching to any securities held by the Corporation. Such instruments, certificates or other evidence shall be in favour of such person or persons as may be determined by the officers executing such proxies or arranging for the issuance of voting certificates or such other evidence of the right to exercise such voting rights. In addition, the Board may from time to time direct the manner in which and the person or persons by whom any particular voting rights or class of voting rights may or shall be exercised.

### **Section 2.8 Divisions.**

The Board may cause the business and operations of the Corporation or any part thereof to be divided or segregated into one or more divisions upon such basis, including without limitation, character or type of businesses or operations, geographical territories, product lines or goods or services as the Board may consider appropriate in each case. From time to time the Board or, if authorized by the Board, the president may authorize, upon such basis as may be considered appropriate in each case:

- (a) **Sub-Division and Consolidation.** The further division of the business and operations of any such division into sub-units and the consolidation of the business and operations of any such divisions and sub-units;
- (b) **Name.** The designation of any such division or sub-unit by, and the carrying on of the business and operations of any such division or sub-unit under, a name other than the name of the Corporation; provided that the Corporation shall set out its name in legible characters in all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the Corporation; and
- (c) **Officers.** The appointment of officers for any such division or sub-unit, the determination of their powers and duties, and the removal of any such officer so appointed without prejudice to such officer's rights under any employment contract or in law, provided that any such officers shall not, as such, be officers of the Corporation, unless expressly designated as such.

### ARTICLE 3 BORROWING AND SECURITIES

#### Section 3.1 Borrowing Power.

- (1) Without limiting the borrowing powers of the Corporation as set forth in the Act, but subject to the Articles and the Shareholders' Agreement, the Board may from time to time on behalf of the Corporation, without authorization of the Shareholders:
  - (a) Borrow money upon the credit of the Corporation;
  - (b) Issue, reissue, sell or pledge bonds, debentures, notes or other similar obligations of the Corporation, whether secured or unsecured;
  - (c) To the extent permitted by the Act, give a guarantee on behalf of the Corporation to secure performance of any present or future indebtedness, liability or obligation of any person; and
  - (d) Charge, mortgage, hypothecate, pledge, or otherwise create a security interest in all or any currently owned or subsequently acquired real or personal, movable or immovable, property of the Corporation, including book debts, rights, powers, franchises and undertakings, to secure any such bonds, debentures, notes or other evidences of indebtedness or guarantee or any other present or future indebtedness, liability or obligation of the Corporation.
- (2) Nothing in this section limits or restricts the borrowing of money by the Corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the Corporation.

#### Section 3.2 Delegation.

Subject to the Act and the Articles, the Board may from time to time delegate to a committee of the Board, one or more Directors or officers of the Corporation or any other person as may be designated by the Board all or any of the powers conferred on the Board by Section 3.1 or by the Act to such extent and in such manner as the Board shall determine at the time of each such delegation.

### ARTICLE 4 DIRECTORS

#### Section 4.1 Action by the Board.

The Board shall supervise the management of the business and affairs of the Corporation. Subject to the By-laws, the powers of the Board may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in

writing signed by all the Directors entitled to vote on that resolution at a meeting of the Board. Where there is a vacancy in the Board, the remaining Directors may, exercise all the powers of the Board so long as a quorum remains in office.

#### **Section 4.2 Number of Directors.**

Until changed in accordance with the Act and the Recognition Order, the Board shall consist of such number of Directors within the minimum and maximum number of Directors provided for in the Articles as is determined by special resolution or, if such special resolution empowers the Board to determine the number, by a resolution of the Board, provided, however, that in the latter case the Directors may not, between meetings of Shareholders, increase the number of Directors on the Board to a total number greater than one and one-third times the number of Directors required to have been elected at the last annual Shareholders' Meeting.

#### **Section 4.3 Director Representation**

Subject to any decision to the contrary by the Commissions made in accordance with applicable legislation, the Board shall be constituted as follows.

- (1) At all times, the Board shall consist of an uneven number of Directors, which shall include an equal number of Independent Directors and non-Independent Directors, and the president of the Corporation, who shall be deemed to be neither an Independent Director nor a non-Independent Director. If the number of non-Independent Directors is increased or decreased, the number of Independent Directors shall also be increased or decreased so that at all times, the Board shall consist of an equal number of Independent and non-Independent Directors.
- (2) In the event that a vacancy arises for any reason which causes the foregoing requirement not to be fulfilled, the Board may continue to act but steps shall be taken by the parties hereto to fill the vacancy as soon as reasonably possible.
- (3) A Governance Committee shall be established in accordance with the By-laws which shall have the responsibility to select and review qualified candidates for Independent Directors for election to the Board.
- (4) At all times, the non-Independent Directors shall consist of an equal number of Directors appointed by each Shareholder and at least one Director who is associated with or experienced with the Canadian public venture capital market, who shall be appointed jointly by the Shareholders. In making such appointment the TSE and the IDA will utilize all advisory resources available, including the TSE/CDNX Advisory Board. Should CDNX become regulated by RS Inc. and reach or exceed 10% of the Canadian equity securities market

(where market share (“Market Share”) will be calculated on the trading activity of the previous calendar year, based on 25% of trading value, 25% of trading volume and 50% of number of trades), CDN X shall be entitled to nominate the fifth non-Independent Director in the place of the TSE and IDA for the next succeeding term. If, at the end of each term thereafter, CDN X’s position in the previous calendar year does not reach or exceed 10% of the Market Share of the Canadian equity securities market then CDN X will not be entitled to representation in the subsequent term and the TSE and IDA shall again jointly nominate the fifth non-Independent Director, who shall be deemed to be neither a representative of the TSE nor of the IDA, and who will be an individual who is associated with or experienced with the Canadian public venture capital market

- (5) Any marketplace (excluding CDN X), that is not a Shareholder of the Corporation, will be permitted to appoint a Director to the Board for a term of one year when its Market Share reaches or exceeds 10% of the Market Share. If, at the end of the term, the marketplace’s position in the previous calendar year does not reach or exceed 10% of the Market Share of the Canadian equity securities market, then the marketplace will not be entitled to appoint a Director in the subsequent term.
- (6) Initially, the Independent Directors will be appointed by the Shareholders, jointly in accordance with the Terms of Reference, and their names will be provided to the Commissions, prior to their election as Directors at the initial Shareholders’ Meeting.

#### **Section 4.4 Quorum.**

Subject to Section 4.1, the quorum for the transaction of business at any meeting of the Board shall consist of a majority of the Directors or such other number of Directors, in compliance with the Act, as the Board may from time to time determine, with at least one non-Independent Director present representing each Shareholder and at least 50% of the Independent Directors present.

#### **Section 4.5 Qualification.**

- (1) No Person shall be qualified for election as a Director (i) if he or she is less than eighteen years of age; (ii) if he or she is of unsound mind and has been so found by a court in Canada or elsewhere; (iii) if he or she is not an individual, or; (iv) if he or she has the status of bankrupt. A Director need not be a Shareholder.
- (2) A majority of the Directors shall be resident Canadians.

**Section 4.6 Election and Term.**

- (1) Subject to the Act, the election of Directors shall take place at the first meeting and thereafter at each annual Shareholders' Meeting and all the Directors then in office shall retire but, if qualified, shall be eligible for re-election. The number of Directors to be elected at any such meeting shall, if a minimum and maximum number of Directors is authorized by the Articles, be the number of Directors determined in accordance with Section 5.2 or shall, if a fixed number of Directors is authorized, be such fixed number. The election shall be by ordinary resolution. If an election of Directors is not held at the proper time, the incumbent Directors shall continue in office until their successors are elected.
- (2) The Shareholders shall elect all Directors appointed under Subsection 5.3.
- (3) If the Shareholders reject a candidate for Independent Director, the Corporation shall notify the Canadian Securities Administrators.
- (4) Each Director elected as a Director by the Shareholders shall remain as a Director for a term of one year. Each Director shall be entitled to re-election as a Director but shall not be entitled to serve as a Director for cumulative terms which would exceed eight years in total.

**Section 4.7 Vacation of Office and Release of Claims.**

- (1) A Director ceases to hold office when he or she dies; he or she is removed from office by the Shareholders; he or she ceases to be qualified for election as a Director; or his or her written resignation is received by the Corporation, or, if a time is specified in such resignation, at the time so specified, whichever is later.
- (2) When a Director ceases to hold office the Corporation shall release a resigning or departing Director of all claims against him or her with respect to any matter or thing up to and including the resignation or removal in his or her capacity as Directors of the Corporation, except for any claims which might arise out of the gross negligence or fraud of the resigning or departing Director.

**Section 4.8 ATS Representative**

At all times, one Director shall be an ATS representative. The initial ATS representative shall be jointly appointed to the Board by the TSE and the IDA in accordance with the criteria set out in the Terms of Reference and thereafter the ATS representative shall be appointed annually by the TSE and the IDA jointly in accordance with the criteria set out in the Terms of Reference until such time as there is an ATS marketplace in Canada that is regulated by the Corporation. At such time as there is an ATS marketplace or marketplaces in Canada that are

regulated by the Corporation, effective as at the end of the term of the then-existing ATS representative on the Board, each ATS marketplace that is regulated by the Corporation shall be entitled to nominate an individual to act as the ATS representative on the Board. The Governance Committee shall appoint the ATS representative to the Board from among the ATS nominees. In the event that, at the conclusion of any term of the ATS representative, there is no longer an ATS marketplace that is regulated by the Corporation, the TSE and the IDA shall appoint the ATS representative in accordance with the provisions of this Section.

**Section 4.9 Vacancies.**

Any vacancy in the Board shall be filled as follows:

- (a) If the Director to be appointed is an Independent Director the Governance Committee, considering the Terms of Reference shall recommend to the Board qualified candidates. If the Board considers the recommended candidates are qualified and desirable the Board will nominate the candidates before a meeting of the Shareholders, who will confirm or reject the candidates. If a candidate recommended by the Governance Committee is not nominated by the Board or is rejected by the Shareholders the Governance committee will recommend further candidates.
- (b) If the Director to be appointed is a non-Independent Director then:
  - (i) where the vacating Director is a representative of a Shareholder, that Shareholder shall be entitled to appoint the new Director;
  - (ii) where the vacating Director is a representative of the Canadian public venture capital market the Shareholders shall jointly appoint the new director; and
  - (iii) where the vacating Director is a representative of another marketplace the new Director shall be appoint in accordance with the provisions of Section 5.7;

and such Director shall be confirmed before a meeting of the Shareholders.

**Section 4.10 Canadian Majority at Meetings.**

The Board shall not transact business at a meeting of Directors, other than filling a vacancy in the Board, unless a majority of the Directors present are resident Canadians except where:

- (a) A resident Canadian Director who is unable to be present approves in writing or by telephone or other communications facilities the business transacted at the meeting; and

- (b) A majority of resident Canadians would have been present had that Director been present at the meeting.

**Section 4.11 Canadian Majority at Meetings.**

The Board shall not transact business at a meeting of Directors, other than filling a vacancy in the Board, unless a majority of the Directors present are resident Canadians except where:

- (a) A resident Canadian Director who is unable to be present approves in writing or by telephone or other communications facilities the business transacted at the meeting; and
- (b) A majority of resident Canadians would have been present had that Director been present at the meeting.

**Section 4.12 Meeting by Telephone.**

If all the Directors of the Corporation present at or participating in a meeting consent, a meeting of the Board or of a committee of the Board may be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a Director participating in such a meeting by such means is deemed for the purposes of the Act to be present at that meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the Board and of committees of the Board.

**Section 4.13 Place of Meetings.**

Meetings of the Board may be held at any place within or outside Canada and, in any financial year of the Corporation, a majority of the meetings of the Board need not be held in Canada.

**Section 4.14 Calling of Meetings.**

Meetings of the Board shall be held from time to time at such time and at such place as the Board, the chair of the Board, the president, or any two Directors may determine.

**Section 4.15 Notice of Meeting.**

Notice of the time and place of each meeting of the Board shall be given in the manner provided in Section 10.1 to each Director not less than forty-eight hours before the time when the meeting is to be held provided that a meeting may be convened upon less than forty-eight hours' notice where it is necessary to hold a meeting to address an urgent regulatory matter. A notice of a meeting of Directors need not specify the purpose of or the business to be transacted at the meeting

except where the Act requires such purpose or business to be specified. A Director may in any manner and at any time waive a notice of or otherwise consent to a meeting of the Board and, subject to the Act, attendance of a Director at a meeting of the Board is a waiver of notice of the meeting.

**Section 4.16 First Meeting of New Board.**

Provided a quorum of Directors is present, each newly elected Board may without notice hold its first meeting immediately following the Shareholders' Meeting at which such Board is elected.

**Section 4.17 Adjourned Meeting.**

Notice of an adjourned meeting of the Board is not required if the time and place of the adjourned meeting is announced at the original meeting.

**Section 4.18 Regular Meetings.**

The Board may appoint a day or days in any month or months for regular meetings of the Board at a place and hour to be named. A copy of any resolution of the Board fixing the place and time of such regular meetings shall be sent to each Director forthwith after being passed, but no other notice shall be required for any such regular meeting except where the Act requires the purpose thereof or the business to be transacted thereat to be specified.

**Section 4.19 Chair of Meetings of the Board.**

The chair of any meeting of the Board shall be the first mentioned of such of the following officers as have been appointed and who is a Director and is present at the meeting: chair of the Board, vice-chair of the Board or the president. If no such officer is present, the Directors present shall choose one of their number to be chair.

**Section 4.20 Votes to Govern.**

At all meetings of the Board every question shall be decided by a majority of the votes cast on the question and in case of an equality of votes the chair of the meeting shall be entitled to a second or casting vote.

**Section 4.21 Conflict of Interest.**

- (1) A Director or officer of the Corporation who is a party to, or who is a Director or officer of or has a material interest in, any person who is a party to, a material contract, transaction, regulatory matter or regulatory investigation or proposed material contract, transaction, regulatory matter or regulatory investigation with the Corporation, shall disclose the nature and extent of his or her interest at the time and in the manner provided by the Act. Any such contract, transaction, regulatory matter or regulatory investigation or proposed contract, transaction, regulatory matter or regulatory investigation shall be referred to the Board or Shareholders for approval even if such



contract, transaction, regulatory matter or regulatory investigation is one that in the ordinary course of the Corporation's business would not require approval by the Board or Shareholders. Subject to Subsection 4.20(3), such a Director shall not vote on any resolution to approve the same unless the material contract, transaction, regulatory matter or regulatory investigation is:

- (a) An arrangement by way of security for money lent to or obligations undertaken by him or her for the benefit of the Corporation or an affiliate;
  - (b) One relating primarily to his or her remuneration as a Director, officer, employee or agent of the Corporation or an affiliate;
  - (c) One for indemnity or insurance as specified under the Act; or
  - (d) One with an affiliate.
- (2) Notwithstanding the foregoing prohibition on voting by such a Director, he or she may be present at and counted to determine the presence of a quorum at the relevant meeting of Directors as provided in the Act.
- (3) Notwithstanding the prohibition in Subsection 4.20(1), Directors, who must disclose their status, relationship and interest in all such matters, shall not be prohibited from voting on any resolution relating to a regulatory matter unless such resolution is directed specifically at or otherwise directly related to a company by which they are employed or of which they are a Director.

#### **Section 4.22 Remuneration and Expenses.**

The Directors shall be paid such remuneration for their services as the Board may from time to time determine. The Directors shall also be entitled to be reimbursed for travelling and other expenses properly incurred by them in attending meetings of the Board or any committee thereof. Nothing herein contained shall preclude any Director from serving the Corporation in any other capacity and receiving remuneration therefor.

#### **Section 4.23 Applicable Legislation**

For greater certainty, the provisions of this Article 4 are subject to any applicable legislation relating to the Board.

#### **Section 4.24 Review of Corporate Governance**

The corporate governance structure will be reviewed regularly to ensure that it changes to reflect the evolution of the equity markets. The recognition order and

other documents governing RS Inc. will to be amended to reflect the market changes, as agreed upon by RS Inc., the TSE and the IDA.

## **ARTICLE 5 COMMITTEES**

### **Section 5.1 Committees of the Board.**

The Board may appoint from their number one or more committees of the Board, however designated, and delegate to any such committee any of the powers of the Board except those which pertain to items which, under the Act, a committee of the Board has no authority to exercise. A majority of the members of any such committee shall be resident Canadians. Notwithstanding the foregoing, there shall be a Governance Committee as referred to in Section 4.2.

### **Section 5.2 Transaction of Business.**

Subject to the provisions of Section 4.10, the powers of a committee of the Board may be exercised by a meeting at which a quorum is present or by resolution in writing signed by all members of such committee who would have been entitled to vote on that resolution at a meeting of the committee. Meetings of such committee may be held at such place or places designated in Section 4.12.

### **Section 5.3 Advisory Bodies.**

The Board may from time to time appoint such advisory bodies as it may deem advisable. The members of such advisory bodies need not be Directors of the Corporation.

### **Section 5.4 Procedure.**

Unless otherwise determined by the Board, each committee and advisory body shall have power to fix its quorum at not less than a majority of its members, to elect its chair, and to regulate its procedure.

### **Section 5.5 Limits on Authority.**

Notwithstanding any other provision hereof, no president and no committee of Directors has authority to:

- (a) Submit to the Shareholders any question or matter requiring the approval of the Shareholders;
- (b) Fill a vacancy among the Directors or in the office of auditor or appoint or remove any of the chair, the vice-chair, the president or the chief financial officer, however designated, of the Corporation;

- (c) Subject to the Act, issue securities except in the manner and on the terms authorized by the Directors;
- (d) Purchase, redeem or otherwise acquire Shares issued by the Corporation;
- (e) Pay a commission referred to in section 41 of the Act;
- (f) Approve a management information circular referred to in Part III of the Act;
- (g) Approve a take-over bid circular, Directors' circular, or issuer bid circular referred to in Part XX of the Securities Act;
- (h) Approve any financial statements referred to in the Act or the Securities Act;
- (i) Approve an amalgamation under section 184 of the Act or an amendment to the Articles under Subsections 173(3) of the Act; or
- (j) Adopt, amend or repeal By-laws.

## **ARTICLE 6 OFFICERS**

### **Section 6.1 Appointment.**

Subject to the Act and Recognition Order, the Board may from time to time appoint a president, one or more vice-presidents (to which title may be added words indicating seniority or function), a secretary, a treasurer and such other officers as the Board may determine, including one or more assistants to any of the officers so appointed. The Board may specify the duties of and, in accordance with this By-law and subject to the provisions of the Act, delegate to such officers powers to manage the business and affairs of the Corporation. Subject to Sections 6.2 and 6.3, an officer may but need not be a Director and one person may hold more than one office.

### **Section 6.2 Chair and Vice-Chair of the Board.**

The Board shall from time to time also appoint a chair of the Board and may appoint one or more vice-chairs of the Board who shall be Directors and may not be president. If appointed, the Board may assign to them any of the powers and duties that are by any provisions of this By-law assigned to the president, and they shall, subject to the provisions of the Act, have such other powers and duties as the Board may specify. During the absence or disability of the chair of the Board, his or her duties shall be performed and his or her powers exercised by one of the vice-chairs

chosen by the Board. [do we want to set out duties on committees or put those in the terms of reference only? (already in terms of reference).]

**Section 6.3 President and Chief Executive Officer.**

The initial president of the Corporation, who shall also be appointed as the initial chief executive officer of the Corporation, shall be an individual selected by the TSE and IDA on a joint basis. Compensation of the initial president and chief executive officer shall be as agreed upon by the TSE and the IDA. Thereafter the Board shall have the authority, from time to time, to appoint a president, who shall also be appointed as the chief executive officer, and determine the compensation to be paid to such person. The person appointed to the office of president and chief executive officer shall be a resident Canadian.

**Section 6.4 Vice-President.**

A vice-president shall have such powers and duties as the Board or the president may specify.

**Section 6.5 Secretary.**

The secretary shall attend and be the secretary of all meetings of the Board (or arrange for another individual to so act), Shareholders and committees of the Board and shall enter or cause to be entered in records kept for that purpose minutes of all proceedings thereat; he or she shall give or cause to be given, as and when instructed, all notices to Shareholders, Directors, officers, auditors and members of committees of the Board; he or she shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation and of all books, papers, records, documents, and instruments belonging to the Corporation, except when some other officer or agent has been appointed for that purpose; and he or she shall have such other powers and duties as the Board or the president may specify.

**Section 6.6 Treasurer.**

The treasurer shall keep proper accounting records in compliance with the Act and shall be responsible for the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation; he or she shall render to the Board whenever required an account of all his or her transactions as treasurer and of the financial position of the Corporation; and he or she shall have such other powers and duties as the Board or the president may specify.

**Section 6.7 Powers and Duties of Other Officers.**

The powers and duties of all other officers shall be such as the terms of their engagement call for or as the Board or the president may specify. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised

and performed by such assistant, unless the Board or the president otherwise directs.

**Section 6.8 Variation of Powers and Duties.**

The Board may from time to time and subject to the provisions of the Act, vary, add to or limit the powers and duties of any officer.

**Section 6.9 Term of Office.**

The Board, in its discretion, may remove any officer of the Corporation, without prejudice to such officer's rights under any employment contract. Otherwise each officer appointed by the Board shall hold office until his or her successor is appointed, or until his or her earlier resignation.

**Section 6.10 Terms of Employment and Remuneration.**

The terms of employment and the remuneration of an officer appointed by the Board shall be settled by it from time to time or by a committee of the Board appointed for that purpose.

**Section 6.11 Conflict of Interest.**

An officer shall disclose his or her interest in any material contract or proposed material contract with the Corporation in accordance with Section 4.20 and the Act.

**Section 6.12 Agents and Attorneys.**

The Corporation, by or under the authority of the Board shall have power from time to time to appoint agents or attorneys for the Corporation in or outside Canada with such powers of management, administration or otherwise (including the power to sub-delegate) as may be thought fit, subject to the provisions of the Act.

**Section 6.13 Fidelity Bonds.**

The Board may require such officers, employees and agents of the Corporation as the Board deems advisable to furnish bonds for the faithful discharge of their powers and duties, in such form and with such surety as the Board may from time to time determine.

**ARTICLE 7**

**PROTECTION OF DIRECTORS, OFFICERS AND OTHERS**

**Section 7.1 Limitation of Liability.**

Every Director and officer of the Corporation in exercising his or her powers and discharging his or her duties shall act honestly and in good faith with a view to

the best interests of the Corporation and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subject to the foregoing, no Director or officer shall be liable for the acts, neglects or defaults of any other Director, officer or employee, or for joining in any act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the monies, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his or her part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his or her office or in relation thereto; provided that nothing herein shall relieve any Director or officer from the duty to act in accordance with the Act and the regulations thereunder or from liability for any breach thereof.

**Section 7.2 Indemnity.**

- (1) Subject to the limitations contained in the Act, the Corporation shall indemnify a Director or officer, a former Director or officer, or a person who acts or acted at the Corporation's request as a Director or officer of a body corporate of which the Corporation is or was a Shareholder or creditor, and his or her heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him or her in respect of any civil, criminal or administrative action or proceeding to which he or she is made a party by reason of being or having been a Director or officer of the Corporation or such body corporate, if:
  - (a) He or she acted honestly and in good faith with a view to the best interests of the Corporation; and
  - (b) In the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful.
- (2) The Corporation shall also indemnify such person in such other circumstances as the Act permits or requires. Nothing in this By-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this By-law.

**Section 7.3 Special Limitation of Liability Provisions.**

- (1) For purposes of this section 7.3 and section 7.4 only:

“**committee member**” shall mean a member of a committee, standing committee or ad hoc committee duly appointed by the Board;

“**employee**” shall for greater certainty not include independent contractors;

“**independent contractor**” shall mean an independent contractor, self-employed person or contractor retained by the Corporation or its subsidiaries to provide goods, services or advice, including but not limited to consultants, tradesmen and trade contractors;

“**Indemnitee**” shall mean every current or former Protected Party and his heirs, executors, and administrators, legal representatives and estate and effects;

“**Protected Party**” shall mean every Director, officer, employee, committee member or advisory body member of the Corporation and any of its subsidiaries;

“**subsidiaries**” shall include any subsidiary within the meaning of the Act and any other Person designated by the Board in which the Corporation has a significant equity interest, directly or indirectly;

- (2) No Protected Party shall be liable
- (a) for the acts, defaults or omissions of any other Protected Party;
  - (b) by reason of him or her having joined in any receipt for money not received by him personally;
  - (c) for any loss on account of defect of title to any property acquired by the Corporation;
  - (d) on account of the insufficiency of any security in or upon which any moneys of the Corporation may be invested, provided that such investment is within the guidelines established by the Board;
  - (e) for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any of the moneys, securities or other property of the Corporation may be deposited;
  - (f) for any loss incurred through any bank, broker or other agent;
  - (g) for any loss occasioned by any error of judgment or oversight on his or her part; or

- (h) for any loss, damage or misfortune whatever which shall happen in the execution of his duties or in relation thereto, including in the execution of duties, whether in an official capacity or not, for or on behalf of or in relation to the Corporation or any of its subsidiaries or any body corporate or entity which he or she serves or provides services to at the request of or on behalf of the Corporation or any of its subsidiaries, unless the same is occasioned by his or her own wilful neglect or default.
- (3) The Corporation shall not be liable to a marketplace or Participant for any loss, damage, cost, expense, or other liability or claim arising from any negligent, reckless or wilful act or omission of a Protected Party or of an independent contractor.
- (4) In the event that any legal proceeding is brought or threatened against the Corporation, a Protected Party or an independent contractor to impose liability on the Corporation, a Protected Party or an independent contractor, which arises directly or indirectly from the use by a Participant of a marketplace, the Participant shall reimburse the Corporation as determined by the Corporation for:
  - (a) all costs, charges, expenses and legal and professional fees incurred by the Corporation in connection with the proceeding, including costs incurred to indemnify a Protected Party;
  - (b) any recovery adjudged against the Corporation or a Protected Party in the event that the Corporation or a Protected Party in the event that the Corporation or a Protected Party is found to be liable; and
  - (c) any payment made by the Corporation with the consent of the Participant in settlement of such proceeding.

The Corporation shall not be liable to a Participant or marketplace for any loss, damage, costs, expense, or other liability arising from any act or omission of any clearing agency, including without limitation the Canadian Depository for Securities Limited and the Canadian Derivatives Clearing Corporation.

**Section 7.4 Special Indemnification Provisions.**

- (1) To the extent permitted by law, every Indemnitee shall from time to time, and at all times, be indemnified and saved harmless out of the funds of the Corporation from and against:
  - (a) all costs, charges and expenses (including an amount paid to settle an action or satisfy a judgment and including legal and professional fees and out of pocket expenses of attending trials, hearings and meetings)



whatsoever that such Indemnitee sustains or incurs in or about any action, suit or proceeding, whether civil, criminal or administrative, and including any investigation, inquiry or hearing, or any appeal therefrom, that is threatened, brought, commenced or prosecuted against him or her, or in respect of which he or she is compelled or requested by the Corporation to participate, for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him in or about the execution of the duties of his or her office as they relate to the Corporation or any of its subsidiaries, including those duties executed, whether in an official capacity or not, for or on behalf of or on behalf of or in relation to any body corporate or entity which he or she serves or served at the request of or on behalf of the Corporation or any of its subsidiaries; and

- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs of the Corporation and its subsidiaries or any body corporate or entity which he or she serves or served, whether in an official capacity or not, at the request of or on behalf of the Corporation or any of its subsidiaries;

except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

- (2) Any indemnification under section 7.4(1) (unless ordered by a court) shall be made by the Corporation unless a determination is reasonably and promptly made by the Board by a majority vote of a quorum of disinterested Directors, or (if such quorum is not obtainable or, even if obtainable, a quorum of disinterested Directors so directs) by independent legal counsel in a written opinion, that, based upon the facts known to the Board or counsel at the time such determination is made, such Indemnitee is not entitled to indemnification by reason of his own wilful neglect or default.
- (3) For greater certainty, it is confirmed that, to the extent permitted by law, the Corporation shall indemnify all costs and expenses incurred in connection with any action, suit or proceeding contemplated in section 7.4(1), regardless of whether the Indemnitee has been successful or substantially successful on the merits, and without limiting the generality of the foregoing, such Indemnitee shall be indemnified against all expenses in connection with the dismissal of such action or issue without prejudice or in connection with the settlement of such action or issue without admission of liability.
- (4) To the extent permitted by law, and subject to section 7.4(5), all costs, charges and expenses indemnified (including legal and professional fees and including out of pocket expenses for attendance at trials, hearing and

meetings) shall be paid by the Corporation in advance of the final disposition of the matter, provided that the Indemnitee shall undertake to repay such amount in the event that it is ultimately determined, either pursuant to section 7.4(2) or by a court of competent jurisdiction, that such Indemnitee is not entitled to indemnification.

- (5) Any costs, charges or expenses (including legal and professional fees and out of pocket expenses of attending trials, hearings and meetings) incurred or to be incurred in any action, suit or proceeding, whether civil, criminal or administrative, including any investigation, inquiry or hearing, or any appeal therefrom, shall be paid by the Corporation promptly, and in any event, within ninety days after receiving the written request of the Indemnitee, unless a determination is reasonably and promptly made by the Board under section 7.4(2) that such Indemnitee is not entitled to indemnification or to an advancement of expenses.
- (6) Any person entitled to indemnification pursuant to section 7.4 or otherwise shall give notice to the Corporation, where practical, of any action, suit or proceeding which may give rise to a demand for indemnification.
- (7) Any person entitled to and demanding indemnification, pursuant to section 7.4 or otherwise, shall cooperate with the Corporation throughout the course of any action, suit or proceeding, whether civil, criminal or administrative, including any investigation, inquiry or hearing, to the fullest extent possible, including but not limited to, providing the Corporation with the consent and authority, to be exercised at the sole option of the Corporation, to take carriage of such person's defense.
- (8) The foregoing rights of indemnification and advancement of expenses shall not affect any other rights to indemnification or be exclusive of any other rights to which any person may be entitled by law or otherwise.

**Section 7.5 Insurance.**

Subject to the Act, the Corporation may purchase and maintain insurance for the benefit of any person referred to in Section 7.2 and/or Section 7.3 against such liabilities and in such amounts as the Board may from time to time determine and as are permitted by the Act.

## ARTICLE 8 SHARES

### Section 8.1 Allotment of Shares.

Subject to the Securities Act, the Act, the Articles and the Shareholders' Agreement, the Board may from time to time allot or grant options to purchase the whole or any part of the authorized and unissued Shares of the Corporation at such times and to such persons and for such consideration as the Board shall determine, provided that no Share shall be issued until it is fully paid as provided by the Act.

### Section 8.2 Registration of a Share Transfer.

Subject to the provisions of the Securities Act and the Act, no transfer of a Share shall be registered in a securities register except upon presentation of the certificate representing such Share with an endorsement which complies with the Act made thereon or delivered therewith duly executed by an appropriate person as provided by the Act, together with such reasonable assurance that the endorsement is genuine and effective as the Board may from time to time prescribe, upon payment of all applicable taxes and any reasonable fees prescribed by the Board, and upon compliance with such restrictions on transfer as are authorized by the Articles.

The registration of any transfer of Shares is subject to the satisfaction of any restrictions on transfer contained in the Articles, subject to the provisions of the Shareholders' Agreement and to compliance with any applicable legislation, including the Securities Act.

### Section 8.3 Transfer Agents.

The Board may from time to time appoint, for each class of securities and warrants issued by the Corporation, (a) a trustee, transfer agent or other agent to keep the securities register and the register of transfers and one or more persons or agents to keep branch registers and (b) a registrar, trustee or agent to maintain a record of issued security certificates and warrants, and, subject to the Act, one person may be appointed for the purposes of both clauses (a) and (b) above in respect of all securities and warrants of the Corporation or any class or classes, thereof. The Board may at any time terminate such appointment.

### Section 8.4 Non-Recognition of Trusts.

Subject to the provisions of the Act, the Corporation may treat the registered holder of a Share as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the Share, and otherwise to exercise all the rights and powers of a holder of the Share.

**Section 8.5 Share Certificates.**

Every Shareholder is entitled, upon request, to a Share certificate that complies with the Act in respect of the Shares held by the Shareholder or to a non-transferable written acknowledgement of the Shareholder's right to obtain a Share certificate from the Corporation in respect of the Shares of the Corporation held by the Shareholder. A Share certificate shall be signed manually by at least one Director or officer of the Corporation and by or on behalf of a registrar, transfer agent, branch transfer agent or issuing or other authenticating agent of the Corporation, if applicable. Additional signatures required on a Share certificate may be printed or otherwise mechanically reproduced thereon. If a Share certificate contains a printed or mechanically reproduced signature of a person, the Corporation may issue the Share certificate notwithstanding that the person has ceased to be a Director or an officer of the Corporation, and the Share certificate is as valid as if the person were a Director or an officer at the date of its issue.

**Section 8.6 Replacement of Share Certificates.**

The Board or any officer or agent designated by the Board may in its or his or her discretion direct the issue of a new Share or other such certificate in lieu of and upon cancellation of a certificate that has been mutilated or in substitution for a certificate claimed to have been lost, apparently destroyed or wrongfully taken on payment of such reasonable fees and on such terms as to indemnity, reimbursement of expenses and evidence of loss and of title as the Board may from time to time prescribe, whether generally or in any particular case.

**Section 8.7 Joint Shareholders.**

If two or more persons are registered as joint holders of any Share, the Corporation shall not be bound to issue more than one certificate in respect thereof, and delivery of such certificate to one of such persons shall be sufficient delivery to all of them. Any one of such persons may give effectual receipts for the certificate issued in respect thereof or for any dividend, bonus, return of capital or other money payable or warrant issuable in respect of such Share.

**Section 8.8 Deceased Shareholders.**

In the event of the death of a holder, or of one of the joint holders, of any Share, the Corporation shall not be required to make any entry in the securities register in respect thereof or to make any dividend or other payments in respect thereof, except upon production of all such documents as may be required by law and upon compliance with the reasonable requirements of the Corporation and its transfer agents.

### **Section 8.9 Applicable Legislation**

For greater certainty, the provisions of this Article 8 are subject to any applicable legislation relating to the Shares of the Corporation, including without limitation the provisions of the Securities Act.

## **ARTICLE 9 MEETINGS OF SHAREHOLDERS**

### **Section 9.1 Annual Meetings.**

The annual Shareholders' Meeting shall be held at such time in each year and, subject to section 9.3, at such place as the Board, the chair of the Board or the president may from time to time determine, for the purpose of considering the financial statements and reports required by the Act to be placed before the annual meeting, electing Directors, appointing an auditor (unless the Corporation is exempted under the Act from appointing an auditor), and for the transaction of such other business as may properly be brought before the meeting.

### **Section 9.2 Special Meetings.**

The Board, the chair of the Board, the vice-chair of the Board or the president shall have power to call a special Shareholders' Meeting at any time.

### **Section 9.3 Place of Meetings.**

Subject to the Articles, meetings of Shareholders shall be held at the registered office of the Corporation or elsewhere in the municipality in which the registered office is situate or, if the Board shall so determine, at some other place in Canada or, if all the Shareholders entitled to vote at the meeting so agree, at some place outside Canada.

### **Section 9.4 Notice of Meetings.**

Notice of the time and place of each Shareholders' Meeting shall be given in the manner provided in Section 10.1 not less than ten nor more than fifty days before the date of the meeting to each Director, to the auditor, and to each Shareholder who at the close of business on the record date for notice is entered in the securities register as the holder of one or more Shares carrying the right to vote at the meeting. Notice of a Shareholders' Meeting called for any purpose other than the consideration of minutes of an earlier meeting, consideration of the financial statements and auditor's report, election of Directors and reappointment of the incumbent auditor shall state the nature of such business in sufficient detail to permit the Shareholder to form a reasoned judgment thereon and shall state the text of any special resolution or By-law to be submitted to the meeting. A Shareholder and any other person entitled to attend a Shareholders' Meeting may in any manner waive notice of or otherwise consent to a Shareholders' Meeting, and, subject to the

Act, attendance of any such Shareholder or any such other person is a waiver of notice of the meeting.

**Section 9.5 List of Shareholders Entitled to Notice.**

For every Shareholders' Meeting, the Corporation shall prepare a list of Shareholders entitled to receive notice of the meeting, arranged in alphabetical order and showing the number of Shares held by each Shareholder entitled to vote at the meeting in accordance with the Act. If a record date for the meeting is fixed pursuant to Section 9.6, the Shareholders listed shall be those registered at the close of business on such record date. If no record date is fixed, the Shareholders listed shall be those registered at the close of business on the day immediately preceding the day on which notice of the meeting is given or, where no such notice is given, on the day on which the meeting is held. The list shall be available for examination by any Shareholder during usual business hours at the registered office of the Corporation or at the place where the central securities register is maintained and at the meeting for which the list was prepared. Where a separate list of Shareholders has not been prepared, the names of persons appearing in the securities register at the requisite time as the holder of one or more Shares carrying the right to vote at such meeting shall be deemed to be a list of Shareholders.

**Section 9.6 Record Date for Notice.**

The Board may fix in advance a date, preceding the date of any Shareholders' Meeting by not more than fifty days and not less than twenty-one days, as a record date for the determination of the Shareholders entitled to notice of the meeting, and notice of any such record date shall, unless waived in accordance with the Act, be given not less than seven days before such record date, by newspaper advertisement in the manner provided in the Act. If no record date is so fixed, the record date for the determination of the Shareholders entitled to receive notice of the meeting shall be at the close of business on the day immediately preceding the day on which the notice is given or, if no notice is given, the day on which the meeting is held.

**Section 9.7 Meetings without Notice.**

A Shareholders' Meeting may be held without notice at any time and place permitted by the Act (a) if all the Shareholders entitled to vote thereat are present in person or represented by proxy or if those not present or represented by proxy waive notice of or otherwise consent to such meeting being held, and (b) if the auditors and the Directors are present or waive notice of or otherwise consent to such meeting being held; so long as such Shareholders, auditors or Directors present are not attending for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called. At such a meeting any business may be transacted which the Corporation at a Shareholders' Meeting may transact. If the meeting is held at a place outside Canada, Shareholders not present or represented by proxy, but who have waived notice of or otherwise

consented to such meeting, shall also be deemed to have consented to the meeting being held at such place.

**Section 9.8 Chair, Secretary and Scrutineers.**

The chair of any Shareholders' Meeting shall be the first mentioned of such of the following officers as have been appointed and who is present at the meeting: chair of the Board, vice-chair of the Board, or the president. If no such officer is present within fifteen minutes from the time fixed for holding the meeting, the persons present and entitled to vote shall choose one of their number to be chair. If the secretary of the Corporation is absent, the chair shall appoint some person, who need not be a Shareholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be Shareholders, may be appointed by a resolution or by the chair with the consent of the meeting.

**Section 9.9 Persons Entitled to be Present.**

The only persons entitled to be present at a Shareholders' Meeting shall be those entitled to vote thereat, the Directors and auditor of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act or the Articles or By-laws to be present at the meeting. Any other person may be admitted only on the invitation of the chair of the meeting or with the consent of the meeting.

**Section 9.10 Quorum.**

Subject to the Act and to Section 9.20, a quorum for the transaction of business at any Shareholders' Meeting shall be two persons present in person, each being a Shareholder entitled to vote thereat or a duly appointed proxyholder or representative for an absent Shareholder so entitled, and together holding or representing by proxy all of the outstanding Shares of the Corporation entitled to vote at the meeting. If a quorum is present at the opening of any Shareholders' Meeting, the Shareholders present or represented by proxy may proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting. If a quorum is not present at the opening of any Shareholders' Meeting, the Shareholders present or represented by proxy may adjourn the meeting to a fixed time and place but may not transact any other business.

**Section 9.11 Right to Vote.**

Subject to the provisions of the Act, the Securities Act and the Shareholders' Agreement, at any Shareholders' Meeting for which the Corporation has prepared the list referred to in Section 9.5, every person who is named in such list shall be entitled to vote the Shares shown thereon opposite the person's name at the meeting to which such list relates except to the extent that, where the Corporation has fixed a record date in respect of such meeting pursuant to Section 9.6, such person has transferred any Shares after such record date and the transferee, having produced

properly endorsed certificates evidencing such Shares or having otherwise established that the transferee owns such Shares, has demanded not later than ten days before the meeting that the transferee's name be included in such list. In any such case the transferee shall be entitled to vote the transferred Shares at the meeting. At any Shareholders' Meeting for which the Corporation has not prepared the list referred to in Section 9.5, every person shall be entitled to vote at the meeting who at the time is entered in the securities register as the holder of one or more Shares carrying the right to vote at such meeting.

**Section 9.12 Proxyholders and Representatives.**

- (1) Every Shareholder entitled to vote at a Shareholders' Meeting may appoint a proxyholder, or one or more alternate proxyholders, who need not be Shareholders, to attend and act as the Shareholder's representative at the meeting in the manner and to the extent authorized and with the authority conferred by the proxy. A proxy shall be in writing executed by the Shareholder or the Shareholder's attorney or, if the Shareholder is a body corporate, by an officer or attorney thereof duly authorized, and shall conform with the requirements of the Act.
- (2) Alternatively, every such Shareholder which is a body corporate or association may authorize by resolution of its Directors or governing body an individual to represent it at a Shareholders' Meeting and such individual may exercise on the Shareholder's behalf all the powers it could exercise if it were an individual Shareholder. The authority of such an individual shall be established by depositing with the Corporation a certified copy of such resolution, or in such other manner as may be satisfactory to the secretary of the Corporation or the chair of the meeting. Any such proxyholder or representative need not be a Shareholder.

**Section 9.13 Time for Deposit of Proxies.**

The Board may by resolution fix a time not exceeding forty-eight hours, excluding Saturdays and holidays, preceding any meeting or adjourned Shareholders' Meeting before which time proxies to be used at that meeting must be deposited with the Corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting. A proxy shall be acted upon only if, prior to the time so specified, it shall have been deposited with the Corporation or an agent thereof specified in such notice or, if no such time is specified in such notice, unless it has been received by the secretary of the Corporation or by the chair of the meeting or any adjournment thereof prior to the time of voting.

**Section 9.14 Joint Shareholders.**

If two or more persons hold Shares jointly, any one of them present in person or duly represented by proxy at a Shareholders' Meeting may, in the absence of the



other or others, vote the Shares; but if two or more of those persons are present in person or represented by proxy and vote, they shall vote as one on the Shares jointly held by them.

**Section 9.15 Votes to Govern.**

At any Shareholders' Meeting every question shall, unless otherwise required by the Articles, the Shareholders' Agreement or By-laws or by law, be determined by a majority of the votes cast on the question. In case of an equality of votes either upon a show of hands or upon a poll, the chair of the meeting shall be entitled to a second or casting vote.

**Section 9.16 Show of Hands.**

Subject to the provisions of the Act, any question at a Shareholders' Meeting shall be decided by a show of hands, unless a ballot thereon is required or demanded as hereinafter provided. Upon a show of hands every person who is present and entitled to vote shall have one vote. Whenever a vote by show of hands shall have been taken upon a question, unless a ballot thereon is so required or demanded, a declaration by the chair of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the meeting shall be *prima facie* evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the Shareholders upon the said question.

**Section 9.17 Ballots.**

On any question proposed for consideration at a Shareholders' Meeting, and whether or not a show of hands has been taken thereon, the chair or any person who is present and entitled to vote, whether as Shareholder, proxyholder or representative, on such questions at the meeting may demand a ballot. A ballot so required or demanded shall be taken in such manner as the chair shall direct. A requirement or demand for a ballot may be withdrawn at any time prior to the taking of the ballot. If a ballot is taken each person present shall be entitled, in respect of the Shares which such person is entitled to vote at the meeting upon the question, to that number of votes provided by the Act, the Shareholders' Agreement or the Articles, subject to the provisions of the Securities Act and the result of the ballot so taken shall be the decision of the Shareholders upon the said question.

**Section 9.18 Adjournment.**

The chair at a Shareholders' Meeting may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and place to place. If a Shareholders' Meeting is adjourned for less than thirty days, it shall not be necessary to give notice of the adjourned meeting, other

than by announcement at the earliest meeting that is adjourned. Subject to the Act, if a Shareholders' Meeting is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting.

**Section 9.19 Resolution in Writing.**

A resolution in writing signed by all the Shareholders entitled to vote on that resolution at a Shareholders' Meeting is as valid as if it had been passed at a meeting of the Shareholders unless a written statement or written representation with respect to the subject matter of the resolution is submitted by a Director or the auditor, respectively, in accordance with the Act.

**Section 9.20 Only One Shareholder.**

Where the Corporation has only one Shareholder or only one holder of any class or series of Shares, the Shareholder present in person or duly represented by proxy constitutes a meeting.

**ARTICLE 10  
NOTICES**

**Section 10.1 Method of Giving Notices.**

Any notice (which term includes any communication or document) to be given (which term includes sent, delivered, or served) pursuant to the Act, the regulations thereunder, the Articles, the Shareholders' Agreement, the By-laws or otherwise to a Shareholder, Director, officer, auditor or member of a committee of the Board shall be sufficiently given if delivered personally to the person to whom it is to be given; or if delivered to the person's recorded address; or if mailed to the person at the person's recorded address by prepaid ordinary or air mail; or if sent to the person at the person's recorded address by any means of prepaid transmitted or recorded communication. A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box and deemed to have been received on the fifth day after mailing; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate communication company or agency or its representative for dispatch. The secretary may change or cause to be changed the recorded address of any Shareholder, Director, officer, auditor or member of a committee of the Board in accordance with any information believed by the secretary to be reliable. The foregoing shall not be construed so as to limit the manner or effect of giving notice by any other means of communication otherwise permitted by law.

**Section 10.2 Notice to Joint Holders.**

If two or more persons are registered as joint holders of any Share, any notice shall be addressed to all of such joint holders but notice addressed to one of such persons shall be sufficient notice to all of them.

**Section 10.3 Undelivered Notices.**

If any notice given to a Shareholder pursuant to Section 10.1 is returned on three consecutive occasions because he cannot be found, the Corporation shall not be required to give any further notices to such Shareholder until the Shareholder informs the Corporation in writing of the Shareholder's new address.

**Section 10.4 Omissions and Errors.**

The accidental omission to give any notice to any Shareholder, Director, officer, auditor or member of a committee of the Board or the non-receipt of any notice by any such person or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

**Section 10.5 Persons Entitled by Death or Operation of Law.**

Every person who, by operation of law, transfer (subject to the Articles, the Act, the Applicable Securities Legislation and the Shareholders' Agreement), death of a Shareholder or any other means whatsoever, shall become entitled to any Share, shall be bound by every notice in respect of such Share which shall have been duly given to the Shareholder from whom the Shareholder derives title to such Share prior to the Shareholder's name and address being entered on the securities register (whether such notice was given before or after the happening of the event upon which the Shareholder became so entitled) and prior to the Shareholder furnishing to the Corporation the proof of authority or evidence of the Shareholder's entitlement prescribed by the Act.

**Section 10.6 Waiver of Notice.**

Any Shareholder, proxyholder, representative, other person entitled to attend a Shareholders' Meeting, Director, officer, auditor or member of a committee of the Board may at any time waive any notice, or waive or abridge the time for any notice, required to be given to such person under any provision of the Act, the regulations thereunder, the Articles, the By-laws or otherwise and such waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in the giving or in the time of such notice, as the case may be. Any such waiver or abridgement shall be in writing except a waiver of notice of a Shareholders' Meeting or of the Board or of a committee of the Board which may be given in any manner.

## ARTICLE 11 RULES AND REGULATIONS

### Section 11.1 Rules and Regulations

The Board (or any committee, officer or other person authorized by the Board) may from time to time enact, amend, repeal and re-enact such Rules and Regulations not inconsistent with the Applicable Securities Legislation as it, they, he or she in its, their, his or her discretion may consider advisable for the regulation of marketplaces, Participants, issuers and other persons.

The Board (or any committee, officer or other person authorized by the Board) may also issue, establish, adopt, amend, repeal and re-issue, re-establish and re-adopt interpretations, procedures and practices to supplement such Rules and Regulations.

Such Rules and Regulations may represent the imposition of requirements in addition to or higher than those imposed under the Applicable Securities Legislation or by the Canadian Securities Administrators, shall be binding on marketplaces, Participants, issuers and other persons, as applicable, and may be adopted to, among other things, enhance the credibility and reputation of the Corporation as a well as a self-regulatory organization.

Such Rules and Regulations shall be effective without Shareholder, marketplace, or Participant approval or approval by any other person, except as expressly otherwise provided therein, but may be subject to prior or subsequent review and approval or non-disapproval by the Canadian Securities Administrators.

Without limiting the generality of the foregoing, the Rules and Regulations may deal with all matters related to market regulation, including without limitation:

- (a) the trading rules, trading operations, and standards of practice and business conduct applicable to Participants (and their current and former partners, Shareholders, associates, insiders, Directors, officers, employees, agents and representatives) in respect of their overall equity trading operations and market activities, both through the facilities of marketplaces and generally;
- (b) requirements applicable to or in respect of the trading of listed securities and quoted securities, including without limitation, trading halts, disclosure practices and requirements and take-over and issuer bids;
- (c) compliance reviews, examinations and investigations, and enforcement and disciplinary matters;

- (d) trading ethics, trading rules, trading currencies, clearing and settlement and market surveillance matters;
- (e) the provision of information, cooperation and/or assistance;
- (f) the payment of fees, costs, forfeitures, penalties, fines and/or other amounts; and
- (g) hearing practices, where applicable;
- (h) transitional matters in respect of acts, omissions, circumstances or events prior to the Effective Date.

## **ARTICLE 12 VARIOUS**

### **Section 12.1 Exchange of Information, Agreements.**

The Corporation may provide to domestic or foreign exchanges or self-regulatory organizations or domestic or foreign securities enforcement or securities regulatory authorities information and other forms of assistance for market surveillance, investigative, enforcement and other regulatory purposes.

The Corporation may enter into agreements with domestic or foreign exchanges or self-regulatory organizations or domestic or foreign securities enforcement or securities regulatory authorities providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes.

### **Section 12.2 Marketplace Agreements, Participant Agreements, etc.**

- (1) In the discretion of the Corporation, marketplaces shall be required to enter into regulatory services agreements with the Corporation. In order to obtain access to the facilities of the marketplaces, Participants shall be required to enter into an agreement with the marketplaces and shall agree to submit to the jurisdiction of the Corporation in respect of its Rules and Regulations and in respect of all regulatory matters including but not limited to market surveillance, investigations and enforcement. Participants shall not by virtue thereof have any ownership or voting interest in the marketplaces or the Corporation, and shall be Participants solely by virtue of their contractual arrangements with the marketplaces. Participants shall not be liable for any act, default, obligation or liability of the marketplaces or the Corporation.
- (2) In addition, in the discretion of the Corporation issuers and other persons may be required to enter into agreements with marketplaces or the Corporation.

**Section 12.3 Subject to Applicable Laws.**

The provisions of this By-law are subject to any applicable legislation, including without limitation the Applicable Securities Legislation.

**ARTICLE 13  
EFFECTIVE DATE**

**Section 13.1 Effective Date.**

This By-law shall come into force upon the Effective Date.

**DEEMED CONFIRMED** this      day of                      , 2001.

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President

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Secretary

DRAFT

## Definition of an Independent Director of RS Inc.

The following is the proposed definition of an “Independent Director” of RS Inc.:

“Independent Director” means a director of RS Inc. who is not an associate, director, officer or employee of:

- (a) a marketplace;
- (b) an Access Person;
- (c) a shareholder of RS Inc.; or
- (d) an affiliated entity of any person described in clauses (a), (b) or (c).

### Related Definitions:

A number of terms used in the definition of “Independent Director” are defined in statutes, regulations, national instruments, orders and rules, the interpretation of which will be adopted by reference. In particular:

The order of recognition of RS Inc. defines “Access Persons” to be:

“Access Persons” means all Participants (as such term is defined in the Universal Market Integrity Rules) and all other persons who have been granted trading access to a marketplace.

The *Securities Act* (Ontario) defines “associate” to be:

“**associate**”, where used to indicate a relationship with any person or company means:

- (a) any company of which such person or company beneficially owns, directly or indirectly, voting securities carrying more than 10 per cent of the voting rights attached to all voting securities of the company for the time being outstanding,
- (b) any partner of that person or company,
- (c) any trust or estate in which such person or company has a substantial beneficial interest or as to which such person or company serves as trustee or in a similar capacity,



- (d) any relative of that person who resides in the same home as that person,
- (e) any person who resides in the same home as that person and to whom that person is married, or any person of the opposite sex or the same sex who resides in the same home as that person and with whom that person is living in a conjugal relationship outside marriage, or
- (f) any relative of an person mentioned in clause (e) who has the same home as that person.

National Instrument 21-101 – Marketplace Operation defines “marketplace” and “subscriber” as follows:

**“marketplace”** means:

- (a) an exchange;
- (b) a quotation and trade reporting system; and
- (c) a person or company not included in paragraph (a) or (b) that
  - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities,
  - (ii) brings together the orders for securities of multiple buyers and sellers, and
  - (iii) uses established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade, or
- (d) a dealers that executes a trade of an exchange-traded security outside of a marketplace,

but does not include an inter-dealer bond broker..

**“subscriber”** means, for an ATS, a person or company that has entered into a contractual agreement with the ATS to access the ATS for the purpose of effecting trades or submitting, disseminating or displaying orders on the ATS.

National Instrument 21-101 – Marketplace Operation interprets “affiliated entity” as follows:

- (1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the

- other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.
- (2) In this Instrument, a person or company is considered to be a controlled entity of a person or company if
- (a) in the case of a person or company,
    - (i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and
    - (ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;
  - (b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than 50 percent of the interests in the partnership; or
  - (c) in the case of a limited partnership, the general partner is the second-mentioned person or company.
- (3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if
- (a) it is a controlled entity of,
    - (i) that other,
    - (ii) that other and one or more persons or companies each of which is a controlled entity of that other, or
    - (iii) two or more persons or companies, each of which is a controlled entity of that other; or
  - (b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

The Universal Market Integrity Rules proposes to define the terms “Participant” and “related entity” as follows:

**“Participant”** means:

- (a) a dealer registered in accordance with securities legislation of any jurisdiction and who is:
  - (i) a member of an Exchange,
  - (ii) a user of a recognized quotation and trade reporting system, or
  - (iii) a subscriber of an ATS; or
- (b) a person who has been granted trading access to a marketplace and who performs the functions ordinarily associated with a market maker, specialist or restricted permit holder on the Bourse de Montréal Inc.

**“related entity”** means, in respect of a particular person:

- (a) an affiliated entity of the particular person which carries on business in Canada and is registered as a dealer or adviser in accordance with applicable securities legislation; and
- (b) a person who has been designated by a Market Regulator [in accordance with Rule 10.8(3) of the Universal Market Integrity Rules] as a person who acts in conjunction with the particular person.



INVESTMENT DEALERS ASSOCIATION OF CANADA  
ASSOCIATION CANADIENNE DES COURTIERS EN VALEURS MOBILIÈRES

**TSE**

Toronto Stock Exchange

**VIA FAX (416-593-8240), E-MAIL & DELIVERED**

September 28, 2001

Alberta Securities Commission  
4<sup>th</sup> Floor, Stock Exchange Tower  
300 5<sup>th</sup> Avenue S.W.  
Calgary, Alberta  
T2P 3C4

Attention: Stephen P. Sibold, Q.C.,  
Chair

British Columbia Securities  
Commission  
12<sup>th</sup> Floor, Pacific Centre  
P.O. Box 10142  
701 West Georgia Street  
Vancouver, British Columbia  
V7Y 1L2

Attention: Douglas M. Hyndman,  
Chair

Commission des valeurs mobilières du  
Québec  
800, Square Victoria, 22E Étage  
C.P. 246  
Tour de la Bourse  
Montréal, Québec  
H4Z 1G3

Attention: Carmen Crépin, Présidente

Ontario Securities Commission  
20 Queen Street West  
Box 55, 19<sup>th</sup> Floor  
Toronto, Ontario  
M5H 3S8

Attention: David Brown, Chair

The Manitoba Securities Commission  
1130 Broadway  
Winnipeg, Manitoba  
R3C 3S8

Attention: Donald Murray, Chair

Dear Sirs/Mesdames:

**Re: Application for Recognition of  
Market Regulation Services Inc. ("RS Inc.")**

**Introduction**

This letter sets out the joint application of The Toronto Stock Exchange Inc. ("TSE") and the Investment Dealers Association of Canada ("IDA") on behalf of RS Inc. to the Ontario Securities Commission, the Alberta Securities Commission, the British Columbia Securities Commission, the Commission des valeurs du mobilières du Québec and The Manitoba Securities Commission, which are collectively the members of the Canadian Securities Administrators ("CSA") with jurisdiction, to recognize RS Inc. as a self-regulatory organization ("SRO") in accordance with the applicable securities legislation. RS Inc. intends to become a regulation service provider ("RSP") pursuant to the criteria published in National Instrument 23-101. It is understood that the TSE and Canadian Venture Exchange Inc. ("CDNX") will make application to the applicable securities regulatory authorities with respect to transferring their regulatory functions to RS Inc.

**Securities Regulators**

RS Inc. will provide all necessary notices and information to each jurisdiction recognizing RS Inc. as an SRO except as may be otherwise indicated in an applicable recognition order or directions provided by such jurisdictions.

**Corporate Governance**

The TSE and the IDA intend to enter into an agreement ("Agreement") regarding the corporate governance of RS Inc., a corporation incorporated under the *Canada Business Corporations Act* ("CBCA") on September 21, 2001. RS Inc.'s articles of incorporation are attached as Appendix A. RS Inc. will be a jointly-owned SRO and will act as an RSP in accordance with National Instruments 21-101 and 23-101. RS Inc. will provide independent market regulation services to the TSE, CDNX and any other marketplace, as defined for the purposes of National Instrument 21-101, wishing to retain RS Inc. as an RSP (a "marketplace"). Without limiting the foregoing, any recognized exchange or quotation and trade reporting system ("QTRS"), as well as any registered alternative trading system ("ATS"), may contract with RS Inc. to obtain market regulation services.

The proposed corporate governance model of RS Inc. reflects the current structure of the securities markets. RS Inc.'s draft corporate by-laws are attached as Appendix B. If that structure were to change significantly over time, the corporate

governance model of RS Inc. would be reviewed to ensure it continues to reflect the market structure.

### *Ownership*

Pursuant to the Agreement, the IDA will own 50% of RS Inc.'s shares on behalf of its members and the TSE will own the remaining 50%. The TSE intends to broaden its current shareholder base, which consists primarily of its former members, by making its shares available to the public.

### *RS Inc. Board of Directors*

The constating documents of RS Inc. shall provide that its Board will have a maximum size of 25 Directors and a minimum size of 3 Directors. RS Inc.'s By-laws will provide that the initial Board will be composed of 11 directors: being 5 Independent Directors, 5 non-Independent Directors and the President of RS Inc., who shall be deemed to be neither Independent nor non-Independent. The definition of "Independent Director" is set out in Appendix C attached hereto. Each Director will be elected for a term of one year and shall be entitled to re-election. The Board will elect by simple majority a Chair from among the Directors, excluding the President. RS Inc. will provide the relevant securities regulators with notice of all appointments to the Board.

The TSE and the IDA will each appoint 2 non-Independent Directors. At start-up, the fifth non-Independent Director, who shall be deemed to be neither a representative of the TSE nor of the IDA, will be an individual who is associated with or experienced with the Canadian public venture capital market and shall be appointed jointly by the TSE and the IDA. In making such appointment the TSE and the IDA will utilize all advisory resources available, including the TSE/CDNX Advisory Board. Should CDNX become regulated by RS Inc. and reach or exceed 10% of the Canadian equity securities market (where market share ("Market Share") will be calculated on the trading activity of the previous calendar year, based on 25% of trading value, 25% of trading volume and 50% of number of trades), CDNX shall be entitled to nominate the fifth non-Independent Director in the place of the TSE and IDA for the next succeeding term. If, at the end of each term thereafter, CDNX's position in the previous calendar year does not reach or exceed 10% of the Market Share of the Canadian equity securities market then CDNX will not be entitled to representation in the subsequent term and the TSE and IDA shall again jointly nominate the fifth non-Independent Director, who shall be deemed to be neither a representative of the TSE nor of the IDA, and who will be an individual who is associated with or experienced with the Canadian public venture capital market.

There will be at all times one member of the Board who will be a representative of ATs. This representative will be considered to be an Independent Director until such time as the ATs that such individual is associated or affiliated with becomes

either a marketplace regulated by RS Inc. or an Access Person<sup>1</sup>. Thereafter, the representative of ATs will be considered to be a non-Independent Director.

As each new exchange (excluding CDNX), ATS and QTRS becomes regulated by RS Inc., it will be permitted to appoint a representative to the RS Inc. Board for a term of one year when its Market Share reaches or exceeds 10% of the Canadian equity securities market. If, at the end of each term, the marketplace's position in the previous calendar year does not reach or exceed 10% of the market share of the Canadian equity securities market, as calculated above, then the marketplace will not be entitled to representation in the subsequent term.

If a non-Independent Director is added to (or removed from) the Board, an Independent Director will also be added (or removed) so that there are always an equal number of non-Independent Directors and Independent Directors on the Board.

Quorum for the RS Inc. Board will be a simple majority of the existing Directors, present either in person or by telephone, with at least one representative from each shareholder and at least 50% of the Independent Directors present.

#### *Independent Directors*

The TSE Corporate Governance Guidelines recommend the appointment of "independent" or "unrelated" directors to ensure the independence of the Board from the corporation's management, its significant shareholders and any other person with an interest, business or other relationship that could reasonably be perceived to interfere with a director's ability to act in the best interests of the corporation.

There are three main groups that may be perceived to be conflicted in the governance of RS Inc.:

1. RS Inc.'s significant shareholders;
2. the marketplaces regulated by RS Inc.; and
3. Access Persons;

and their directors, officers, employees and related parties.

Accordingly, RS Inc.'s Independent Directors will be individuals who are not connected with its shareholders, the marketplaces regulated by RS Inc. or Access Persons. RS Inc.'s By-laws will require at least 50% of its Directors to be Independent, and the President shall be deemed to be neither Independent nor non-Independent.

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<sup>1</sup> "Access Persons" means all Participants (as such term is defined in the Universal Market Integrity Rules) and all other persons who have been granted trading access to a marketplace. For the purposes of this application "Participant" shall have the same definition as it has in the Universal Market Integrity Rules.

Individuals who act as independent members on the various committees of the shareholders, marketplaces and Access Persons shall be eligible to qualify as Independent Directors.

#### *Governance Committee*

The RS Inc. Board will delegate the selection of Independent Directors to a Governance Committee of the Board. Appendix D attached hereto sets out the Terms of Reference of the Governance Committee. The Committee will be composed of all the Independent Directors. If the Chair of the Board is an Independent Director, he or she shall be a full, voting member of the Committee. If the Chair of the Board is a non-Independent Director, he or she will be an *ex officio* member of the Governance Committee and shall not be entitled to vote and whose presence shall not be a factor in the determination of the quorum for the Governance Committee. In addition to selecting Independent Directors, the Governance Committee will be responsible for recommending Board size and its composition, as well as evaluating the performance of all Directors.

#### *Selection of Independent Directors*

Appendix E attached hereto sets out the Guidelines of the Governance Committee. Annually, or from time to time as required, the Governance Committee will select candidates to fill vacancies for Independent Directors. The Governance Committee will recommend to the RS Inc. Board those candidates for Independent Directors that it considers qualified and desirable, in accordance with the Guidelines and considering the overall composition of the Board and its representation of the constituents of the Canadian markets. Based on the recommendations of the Governance Committee, the RS Inc. Board will nominate the candidates for Independent Directors. The shareholders will vote to confirm or reject the candidates so nominated as set out below.

Through its properly constituted, independent Governance Committee, RS Inc. will ensure a fair selection process for Independent Directors. The Governance Committee will review its Guidelines periodically (not less than annually) and file any amendments approved by the Board with the relevant securities regulators.

#### *Shareholder Vote to Confirm Directors*

Under the CBCA, RS Inc.'s shareholders must confirm all the Directors who have been nominated by the Board. This statutory right involves a vote by simple majority. If an Independent Director candidate is rejected by the shareholders of RS Inc., the Governance Committee will notify the relevant securities regulators.



### *Initial Independent Directors*

The TSE and the IDA shall jointly nominate the initial Independent Directors in accordance with the Guidelines and their names shall be provided to the relevant securities regulators prior to their election by the shareholders.

### *Finance & Audit Committee*

RS Inc. also proposes to create a Finance & Audit Committee as a committee of the Board. Appendix F attached hereto sets out the Terms of Reference for the Finance & Audit Committee. The RS Inc. Board will be responsible for selecting the Finance & Audit Committee members. The Finance & Audit Committee will consist of at least 5 Directors, the majority of whom shall be Independent Directors, with at least one representative from each shareholder. The Chair of the Board shall be a full, voting member of the Finance & Audit Committee. Quorum will be a majority of Directors comprising the Committee present in person or by telephone, including a majority of Independent Directors on the Committee and at least one non-Independent Director.

### *No Dual Employment of RS Inc. Employees*

RS Inc. employees, including the President, shall not be dually employed by any marketplace or Access Person that is regulated by RS Inc. nor by any shareholder of RS Inc.

## **Fees**

Upon the creation of RS Inc. a fee model ("Fee Model") will be introduced to recover the cost of regulation from marketplaces that have retained RS Inc. as an RSP. The Fee Model will attempt to achieve several objectives, including:

1. being able to recover the total cost of regulation in both active and slow markets;
2. not discriminating in favour of any type of trading business or marketplace;
3. being derived from activity that contributes to the cost of RS Inc.'s regulation services; and
4. being amenable to third party audit and verification by the applicable securities regulatory authorities.

It is generally assumed that the introduction of ATSS and other marketplaces will increase the complexity of market regulation and therefore the overall cost of regulation (even if the aggregate of trading activity remains constant). It is not possible to predict by how much the cost of regulation will increase and it may not be possible to calculate with any certainty the incremental cost after ATSS and other marketplaces commence operation. For this reason it is suggested that the fees levied for market regulation of ATSS be calculated on the same basis as the fees for

the regulation of the existing marketplaces. Charging regulation fees on the same basis for trading on exchanges, QTRSs and ATSS is fair since most, if not all, of that regulation will not be affected by the marketplace on which the trading is done.

Upon close scrutiny of the activities comprising market regulation, it is apparent that trades are the primary drivers of costs, not volume or value. For example, the number of trades processed drives the cost of most market surveillance systems while investigations and enforcement actions are focused on particular trades. Large value or volume trades often attract more regulatory scrutiny as they are more likely to have an impact on the market and, therefore, make regulation of the market a more complex task and can be said to be partial drivers of the cost of market regulation.

#### *Proposed Fee Model*

It is proposed that the regulation fee be calculated and charged on the following basis:

1. The cost of regulation will be tracked and allocated on a market-by-market basis. For this purpose, a “market” is distinct from a “marketplace”. A “market” consists of an exchange and any ATS trading in that exchange’s listed securities, or a QTRS and any ATS trading in that QTRS’s quoted securities. The proposed Fee Model will take into account the relative costs of regulating each market. For example, on a trade-for-trade basis, it is more costly to regulate the CDNX market than the TSE market due to a number of factors, including the number of securities listed on each exchange and their liquidity. Therefore, a separate cost calculation must be performed with respect to the regulation of each market subject to RS Inc.’s jurisdiction in order to ensure that the actual regulation costs for each such market are recovered and that the Access Persons in one market are not subsidizing the cost of regulation in another market merely because the market regulator is the same. It is the intention of RS Inc. to require each marketplace to pay the fees attributable to the trading activity of an Access Person that is not a Participant.

Foreign securities, not traded on a Canadian exchange or QTRS will, for the purposes of determining fees, be considered to be a distinct market.

2. At the option of the marketplace, a variable fee will be charged either to the marketplace itself, based on proportionate share of total trading activity, or directly to the Participants in each marketplace (the variable fee attributable to the trading activity of Access Persons who are not Participants will be payable by the marketplace in accordance with paragraph 1 above). The variable fee charged to the marketplace or Participants will be apportioned based on an overall measure of trading activity comprised of trades, volume and value, with trades weighted 50% and volume and value each weighted 25%. This weighting recognizes that trades are the primary driver of costs but high volume and value trades also create additional challenges to the regulation service provider that should be reflected in the cost of regulation and therefore in the Fee Model. We

note that the regulation fee of TSE RS is currently calculated and billed solely on the basis of trading volume. Trading volume, while it is a readily obtainable measure of trading activity for any marketplace or Access Person, is not the only cost driver for market regulation.

To calculate the variable fee to be charged by RS Inc., the share of trading activity for each Access Person in a market, weighted as set out above, will be divided by the total weighted trading activity of all Access Persons in the market. The percentage share for each Access Person thus obtained will be applied to the cost of regulation for the relevant period. This cost is the total cost to the marketplace or Access Person less the amount recovered from such marketplace or Access Person that is a Participant through the fixed fee.

3. In addition to the variable fee set out above, a small fixed fee would be charged directly to each Access Person that is a Participant to recognize that there is increasing complexity, and therefore cost, as each such Participant is added to a market. This fee would have to be nominal to ensure that it is not perceived as a barrier to participation in the securities markets. As an example, Participants who trade on the TSE are currently subject to a TSE Regulation Services' fee of \$5,000 per Participant. RS Inc. considers this fee to be reasonable and, for its first year of operation, intends to charge a similar fee. The amount collected from the fixed fee will be deducted from the total cost of market regulation that is shared among the marketplaces and Participants in item 1 above.

The proposed Fee Model set out above reflects current plans and is based on economic analysis performed by staff of RS Inc. RS Inc.'s objective in devising this model was to ensure that it is fair to all marketplaces and Access Persons in that it does not discriminate in favour of any type of trading business over another and is supportable as a reflection of the cost of regulation. This model will be reviewed and, if necessary, revised over time and in light of subsequent information to ensure that RS Inc.'s regulation fee remains fair and appropriate and continues to meet the objectives set out at the beginning of this section.

## **Access**

### *Eligibility Status*

A marketplace is eligible to subscribe to be regulated by RS Inc. so long as it is an ATS, an exchange or a QTRS recognized or registered in accordance with securities legislation of an applicable Canadian securities regulatory authority. An eligible ATS must also be a member in good standing of an SRO that is recognized by an applicable Canadian securities regulatory authority.

### *Contractual Conditions*

To receive regulation services from RS Inc. an eligible marketplace must enter into a services agreement with RS Inc., which agreement shall include the following terms:

1. The marketplace shall delegate to the jurisdiction of RS Inc. the administration and enforcement of the Universal Market Integrity Rules (“UMIR”). Marketplaces will require their Access Persons to comply with UMIR as a condition of participation.
2. The rules, by-laws and contracts governing the access granted by the marketplace to its Access Persons shall provide that the Access Person, together with its present and former directors, officers and employees and various other related or affiliated entities, are subject to the jurisdiction of RS Inc. with respect to the administration and enforcement of UMIR.
3. The marketplace must have systems in place that meet RS Inc. requirements in respect of surveillance and reporting including:
  - (i) real time trade and order feeds providing non-public data in STAMP format, or in such other format (including FIX format) as may be required by RS Inc. from time to time; and
  - (ii) the ability to give effect to any direction issued by RS Inc. with respect to the administration of UMIR, including provision for trading halts, delays and suspensions.
4. The marketplace will agree to provide all required data feeds to RS Inc. at the expense of the marketplace (including any charges incurred with respect to the connection of the marketplace to RS Inc. and any charges with respect to the maintenance of that connection).
5. Standard or usual contractual terms including: circumstances for cancellation of the services agreement, transitional procedures, covenants, dispute resolution, notice, amendments, etc.
6. A term requiring receipt of approval of the agreement from the relevant securities regulators.
7. Provisions required by the applicable provisions of Part 7 of National Instrument 23-101 or other requirements established by the applicable securities regulatory authorities.

### **Financial Viability**

RS Inc. will be a not-for-profit organization. The financial model for RS Inc. is founded upon its ability to collect fees to recover the total costs incurred in the

regulation of the marketplaces. At start-up, RS Inc. will be funded through a long-term loan facility provided by the TSE and IDA. It is anticipated that the amount of this loan will not be substantial in relation to the overall budget of RS Inc. This debt will be repaid over a multi-year period and will constitute part of the operating expenses to be recovered from marketplaces or Participants. Initial capital requirements, including start-up expenses of RS Inc., will be covered by the long-term loan.

The assets of RS Inc. at start-up will consist of furniture and fixtures, leasehold improvements to office premises and desktop computers and printers. Initially, all other technology required to operate RS Inc. will be leased from the TSE. Any assets transferred to RS Inc. will be on the basis of fair value.

Regulation fees to be collected in any year will be calculated based on the annual operating budget of RS Inc. and will be charged monthly in advance based on the level of trading activity of marketplaces and Access Persons in the previous month as set out above. It is assumed that over the long term RS Inc. will continue to operate on a cost-recovery basis, in keeping with its status as a not-for-profit entity.

The full complement of staff of RS Inc. is expected to be about 90 persons, across Canada, at the time of the transfer of CDN X staff to RS Inc. RS Inc. anticipates outsourcing specific business functions, however, RS Inc. does not expect to be directly responsible for compensating any third party's staff.

### **Capacity to Perform Regulation Functions**

#### *Recognition Order*

The independence, mandate and obligations of management of RS Inc. will be prescribed as terms and conditions of its recognition order. RS Inc. will be a recognized SRO that is overseen by the relevant securities regulators. This recognition is a pre-condition of its operation as a RSP. It would be contrary to the interests of RS Inc. to pursue any activity that would threaten its recognition or its relationship with the relevant securities regulators. The relevant securities regulators' oversight authority over RS Inc. takes several forms, including approval of rules and periodic oversight examinations, and enables the relevant securities regulators to ensure RS Inc. responds to the public interest in carrying out its mandate as an SRO and RSP.

The proposed terms and conditions of the recognition order would, among other things require:

1. prior approval, by the relevant securities regulators, of significant changes to the structure of RS Inc., its articles, by-laws and any shareholders' agreements;

2. the functions of RS Inc. to be carried out on a not-for-profit basis and independently of the interests of its shareholders, as well as the marketplaces and Access Persons regulated by RS Inc.;
3. that RS Inc. have the necessary technological and other support necessary for RS Inc. to efficiently and effectively regulate marketplaces and Access Persons;
4. that RS Inc. have the necessary procedures to deal with confidential information relating to any exchange, ATS, QTRS or Access Persons; and
5. regular performance reviews of RS Inc.'s operations at least annually.

### *Regulation Services*

RS Inc. will seek to foster investor confidence in the Canadian securities market and to safeguard investor protection through maintenance of fair and orderly marketplaces. As a neutral, cost-effective and responsive SRO, RS Inc. will not discriminate in favour of any type of trading business over another.

RS Inc. will provide the following services to the markets that it regulates:

1. determination and administration of UMIR, including policy development in respect of UMIR;
2. real-time monitoring of trading operations and of market-related activities of marketplaces and Access Persons to ensure compliance with UMIR;
3. market surveillance of marketplaces, including imposing and lifting trading halts and making rulings on unreasonable trades;
4. trade desk reviews of Participants;
5. co-ordinated halting of inter-listed and foreign-listed securities;
6. investigation and enforcement of violations of UMIR by marketplaces and Access Persons; and
7. settlements and hearings with respect to UMIR and otherwise where authority has been delegated to RS Inc.

RS Inc. may also provide the following additional regulation services, if contracted to do so by a marketplace and subject to regulatory approval and applicable law:

1. monitoring and administering trading rules that are specific to a marketplace including interpretation of trading rules that are specific to a marketplace ("Market Quality Rules");

2. monitoring issuer compliance with timely disclosure policies and other listed company surveillance;
3. investigative research of individuals associated with issuers for listing requirements and Participants for member regulation requirements;
4. investigation and enforcement of violations of Market Quality Rules by marketplaces and Access Persons; and
5. listed company regulation.

The additional regulation services will be negotiated and contracted for separately between RS Inc. and a marketplace. Costs associated with these additional regulation services will be allocated exclusively to, and collected from, the contracting marketplace. The Finance & Audit Committee will periodically review such allocations to ensure that such additional regulation services are not being subsidized by or subsidizing regulation services provided to all markets.

#### *Regulated Securities*

If a marketplace chooses to retain RS Inc. as an RSP, it will be the primary SRO regulating trading activity on that marketplace. Moreover, it is assumed that RS Inc. will regulate the trading of any security eligible for trading on such marketplace. As currently contemplated by the applicable securities regulatory authorities, the following securities will be eligible to trade on a marketplace:

1. a security listed on the TSE, CDNX, the Bourse de Montréal or any other recognized stock exchange;
2. a security quoted on a recognized QTRS; and
3. a security listed on a stock exchange or organized market in a foreign jurisdiction for which the securities regulatory authority is a member of the International Organization of Securities Commissions.

#### *Jurisdiction of RS Inc.*

As a recognized SRO operating as a RSP, RS Inc. shall have regulatory jurisdiction over the trading activities of exchanges, ATSS and QTRSs who have contracted with RS Inc., and their Access Persons. The regulatory jurisdiction is carried out through rule development and administration, market surveillance, investigation and enforcement activities in relation to securities traded on a marketplace. As described in more detail above under the heading "Access", marketplaces and Access Persons will agree to submit to RS Inc. jurisdiction in respect of the enforcement of UMIR.

## **Capacity and Integrity of Systems**

### *Current and Future Capacity Estimates*

All trading systems will be owned by a marketplace with access provided to RS Inc. staff for regulatory purposes such as halting stocks, releasing stock freezes, etc.

RS Inc.'s market surveillance operations use a variety of systems ("Surveillance Systems") with varying criticality. Critical Surveillance Systems consist of a suite of applications that monitor real-time and historical trading for possible rule violations as well as anomalous price and volume movements ("Critical Surveillance Systems"). Critical Surveillance Systems are deemed mission critical because they monitor market activity in near real-time and generate potential violations that require further investigation. Critical Surveillance Systems are designed to receive multiple feeds, from different marketplaces, and to consolidate the feeds so that a single marketplace view can be monitored. Consequently, the capacity of the Critical Surveillance Systems (in terms of throughput, response time and storage) must be in the neighbourhood of the aggregate targets and estimates for the marketplaces that are being monitored.

Additional surveillance systems are used for decision support purposes ("Additional Surveillance Systems"). Much of the information provided by the Additional Surveillance Systems is available from a number of sources. Since processing for the Additional Surveillance Systems is not real-time and since the information is not directly dependent upon trading volumes, Additional Surveillance Systems are not deemed mission critical.

### *Capacity Planning and Management*

RS Inc. will regularly forecast its expected business volumes and evaluate new target volumes and if necessary implement Surveillance System changes.

Stress and performance tests for each Critical Surveillance System will be scheduled and conducted at least once each calendar year. In addition, a stress test will be conducted prior to each major change to a Critical Surveillance System.

Stress tests are conducted using equipment and conditions as identical as possible to the actual production environment. All preparation including test plans, test data, actual events, results and conclusions are documented.

### *Development and Testing Methodologies*

RS Inc. uses development and testing cycles that do not interfere with its operating Surveillance Systems. RS Inc. regularly reviews and updates its development and testing methodologies.



### *System Vulnerability*

The level of exposure to threats and system vulnerability for RS Inc. Surveillance Systems will vary based on whether the system is critical or not. Sensitive regulatory data will be kept secure and confidential.

### *Contingency Planning, Disaster Recovery & Business Continuity Plans*

RS Inc. has contingency and disaster recovery plans which vary by the type and criticality of the application.

With respect to the Critical Surveillance Systems, full redundancy exists on the server side with two live servers running in parallel. One server is located in Markham and the other is located on the premises in Toronto. The computer facilities (e.g. computer sites, network, operations staff, etc.) have redundancy built-in so that no single point of failure exists. Furthermore, all Surveillance Systems run autonomously driven by separate trading feeds from the TSE trading engine and will also operate autonomously from the trading systems of any other marketplace. In the event of a failure to the primary surveillance server, surveillance staff can switch between servers from their desktop within seconds and continue to run their market monitoring applications.

In addition to the above, the Surveillance Systems have been designed to accept and integrate separate trade feeds from other markets. Consequently, if multiple markets are providing trade feeds to the surveillance server and one of the marketplaces suffers an outage, the Surveillance Systems will continue to function without interruption, monitoring the trade feed from the remaining operational markets.

### *Audits*

RS Inc. proposes that RS Inc. Surveillance Systems and systems management processes be subject to an audit by an independent third party according to a mutually agreed upon schedule between RS Inc. and the relevant securities regulators.

### *Securities Commission Notification*

RS Inc. proposes that all material systems failures and outages be reported to the relevant securities regulators within a reasonable period of time following each incident. In addition, the relevant securities regulators will be notified in advance of all material changes to surveillance systems. RS Inc. management will designate an individual to be responsible for communicating all systems issues with the relevant securities regulators.

### **Purpose of Rules**

RS Inc. shall, subject to the terms and conditions of the recognition order and the jurisdiction and oversight of the relevant securities regulators, establish rules, regulations or policies:

1. to ensure compliance with securities legislation;
2. to prevent fraudulent and manipulative acts and practices;
3. to promote just and equitable principles of trading;
4. to foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities; and
5. to provide for appropriate discipline.

### **Rules and Rule-Making**

RS Inc. proposes to administer and enforce UMIR in the marketplaces for which RS Inc. acts as the RSP.

On April 20, 2001, Regulation Services and CDNX jointly published UMIR for comment and proposed that UMIR be adopted as an alternative to the CSA Trading Rules set out in draft National Instrument 21-101. It is the intention of RS Inc. to adopt UMIR as its "market integrity" trading rules, subject to RS Inc.'s review and approval of any changes to UMIR from the version published on April 20, 2001.

After the initial adoption of UMIR, any proposal for the amendment of UMIR would be submitted by RS Inc. to the applicable securities regulatory authorities for approval in accordance with the procedures established under a rule protocol between RS Inc., as an SRO, and the applicable securities regulatory authorities.

### **Financial Statements**

RS Inc. proposes to file with the relevant securities regulators unaudited quarterly financial statements within 60 days of each quarter-end and audited annual financial statements within 90 days of year-end.

### **Discipline Rules**

The Regulation Services department of the TSE currently derives its powers of discipline under Part 7 of the Rules of the TSE. The entire TSE Rules, including Part 7, were subject to a public comment period and were brought into force as

recently as April 2000. RS Inc. would propose that UMIR be expanded to incorporate disciplinary and enforcement rules substantially the same as Part 7 of the current TSE Rules, amended to reflect any necessary changes with respect to the provision of services by RS Inc. in multiple jurisdictions. Each marketplace that contracts with RS Inc., their Access Persons (including former Access Persons) and their (current and former) directors, officers, employees and various related parties will be subject to RS Inc.'s disciplinary rules for breaches of UMIR. Each marketplace may retain its own discipline processes for breaches of Market Quality Rules or may delegate such discipline to RS Inc., subject to the jurisdiction of the applicable securities regulatory authority.

RS Inc. will derive its disciplinary powers:

1. from its recognition order as an SRO over marketplaces that it regulates;
2. by contract with the marketplaces it regulates (as noted above, RS Inc. will enter into services agreements with the marketplaces it regulates and such marketplaces will be required to enter into agreements (or where applicable amend their existing agreements) with Access Persons whereby such persons agree to be subject to RS Inc.'s jurisdiction and UMIR); and
3. for marketplaces that are creatures of statute, in accordance with the terms of the statute (for example, the TSE may delegate its disciplinary powers under Part II.1, section 13.0.8(4) of The Toronto Stock Exchange Act. R.S.O. 1990, c. T-15, as amended).

Subject to regulatory approval and applicable law, upon contracting with RS Inc. each marketplace shall transfer all existing disciplinary actions to RS Inc. with respect to matters then within RS Inc.'s jurisdiction, and with respect to Market Quality Rules for which such marketplace has delegated discipline to RS Inc. In addition, subject to regulatory approval and applicable law, RS Inc. will have jurisdiction to investigate and enforce against all trading activities under a marketplace's historic trading rules, as well as under UMIR and with respect to any Market Specific Rules with respect to which such marketplace has delegated authority to RS Inc. Therefore, RS Inc.'s jurisdiction will extend to trading activities under a predecessor of a marketplace.

As UMIR are presently drafted, the discipline procedures of the TSE and CDNX, as presently approved by their respective regulators, would be retained and would be applicable to their respective Participants. In the case of the TSE, the provisions are set out as Part 7 of the TSE Rules. Similarly, the comparable provisions for CDNX are contained in CDNX Rules E.1.00, E.2.00[A] and E.2.00[B]. With the acquisition of CDNX by the TSE, it is now proposed that these disciplinary procedures be harmonized and included directly in UMIR. This harmonization would also have the effect of eliminating the requirement for a Policy to be adopted to set out the practice and procedure with respect to actions against an Access Person that is not a member of an exchange. The actual provisions will be contained in the revised proposal on the content of UMIR. As presently envisaged, the harmonized UMIR

will make the discipline provisions equally applicable to all persons who are subject to the jurisdiction of RS Inc.

### **Due Process**

RS Inc.'s disciplinary rules and procedures will be fair and reasonable and will provide for due process. Any reviewable decision by RS Inc., including any disciplinary or enforcement decision, will be reviewable by the applicable Canadian securities regulatory authority having appropriate jurisdiction.

### **Information Sharing**

RS Inc. is able and willing to co-operate, subject to applicable law, in sharing information, with the relevant securities regulators and their staff, and with other Canadian federal, provincial and territorial recognized SROs and regulatory authorities responsible for the supervision or regulation of securities firms and financial institutions.

The TSE and the TSE Regulation Services department are subject to various information sharing arrangements. RS Inc. is currently reviewing these arrangements and will either continue such arrangements under the terms of an existing agreement or will enter into new or supplementary agreements.

### **Conclusion**

We look forward to receiving your comments at your earliest convenience. If you have any questions or would like to discuss any aspects of the application, please contact Tom Atkinson at 416-947-4310.

Sincerely,

Tom Atkinson  
Vice-President, Regulation Services  
The Toronto Stock Exchange Inc.

Ian Russell  
Senior Vice-President  
Capital Markets  
Investment Dealers Association of  
Canada

cc. Ms. Randee Pavalow  
Director, Capital Markets  
Ontario Securities Commission

**PROPOSED CRITERIA FOR RECOGNITION  
AND  
TERMS AND CONDITIONS**

**1. CORPORATE GOVERNANCE**

The arrangements with respect to the appointment, removal from office and functions of the persons ultimately responsible for making or enforcing the rules of RS Inc., namely, the governing body, are such as to ensure a proper balance between the interests of the different entities desiring access to the regulation services of RS Inc., and there are a reasonable number and proportion of independent directors in order to ensure diversity of representation on the Board.

Without limiting the generality of the foregoing, RS Inc.'s governance structure provides for:

- (a) fair and meaningful representation on its governing body and any committees of the governing body, in the context of the nature and structure of RS Inc.; and
- (b) appropriate qualifications, remuneration, conflict of interest provisions and limitation of liability and indemnification protections for directors and officers and employees of RS Inc. generally.

**Recognition Order Terms and Conditions:**

RS Inc. will comply with the recognition criteria with respect to corporate governance. In particular,

- (a) at least 50 per cent of its directors will consist of independent directors. The definition of independent director excludes a marketplace, a marketplace participant, a shareholder of RS Inc. or an affiliated entity of any of the above and an independent director of RS Inc. will not include any employees of RS Inc. or anyone associated with RS Inc.;
- (b) at all times, one director on the board of directors of RS Inc. (the "Board") will be an individual who is associated with or experienced with the Canadian public venture capital market;
- (c) at all times one member of the Board will be a representative of ATSS, considered to be an Independent Director until such time as that individual is associated or affiliated with an ATS that becomes regulated by RS Inc. and thereafter will be considered to be a non-Independent Director;
- (d) the Board will delegate the selection of Independent Directors and the representative of ATSS, whether Independent or non-Independent to a Governance Committee of the Board which will be composed of all of the Independent Directors;
- (e) RS Inc. will provide the Commission with notice of all appointments to the Board;

- (f) the President of RS Inc. will be deemed to be neither independent nor non-independent;
- (g) quorum for the Board will be a simple majority, with at least one representative from each shareholder and at least 50% of the Independent Directors present;
- (h) RS Inc. shall not, without prior Commission approval, make changes to its corporate governance structure, articles, by-laws or any shareholders' agreement; and
- (i) the corporate governance model will be reviewed by RS Inc. within 12 months from the date of recognition to ensure that it reflects the market structure.

## **2. FEES**

- (a) Any and all fees imposed by RS Inc. are equitably allocated. Fees do not have the effect of creating barriers to access and must be balanced with the criteria that RS Inc. has sufficient revenues to satisfy its responsibilities.
- (b) RS Inc.'s process for setting fees is fair, transparent and appropriate.

### **Recognition Order Terms and Conditions:**

RS Inc. will comply with the recognition criteria with respect to fees. In particular,

- (a) fees will be charged on a cost recovery basis and allocated based on use;
- (b) RS Inc. will not, without prior Commission approval, make any significant changes to the fee model; and
- (c) the fee model will be reviewed by RS Inc. within 12 months from the date of recognition.

## **3. ACCESS**

- (a) RS Inc.'s requirements permit all marketplaces that satisfy criteria established by RS Inc. to access the regulation services of RS Inc.
- (b) Without limiting the generality of the foregoing, RS Inc. will:
  - (i) establish written standards for granting access to its regulation services;
  - (ii) not unreasonably prohibit or limit access by a person or company to services offered by it; and
  - (iii) keep records of:
    - (A) each grant of access including, for each entity granted access to its regulation services, the reasons for granting such access; and

- (B) each denial or limitation of access, including the reasons for denying or limiting access to any applicant.

**Recognition Order Terms and Conditions:**

RS Inc. will comply with the recognition criteria with respect to access. In particular, RS Inc. will,

- (a) ensure that so long as a marketplace is recognized or registered in accordance with securities legislation of an applicable Canadian regulatory authority it will be eligible to subscribe to be regulated by RS Inc.; and
- (b) enter into a written agreement with all eligible marketplaces that provides that:
  - (i) RS Inc. will monitor the conduct of the marketplace and its marketplace participants;
  - (ii) RS Inc. will enforce requirements set governing the conduct of its marketplace participants;
  - (iii) the marketplace will transmit information required under Part 11 of National Instrument 21-101 (audit trail requirements);
  - (iv) the marketplace will comply with all orders or directions made by RS Inc.;
  - (v) where the marketplace is an ATS, the ATS will conduct its trading activities in compliance with requirements set by RS Inc.

**4. FINANCIAL VIABILITY**

RS Inc. has sufficient financial resources for the proper performance of its functions.

**Recognition Order Terms and Conditions:**

RS Inc. will comply with the recognition criteria with respect to financial viability and, in particular, will

- (a) operate on a not-for-profit, cost recovery basis;
- (b) file quarterly financial statements within 60 days of each quarter end and audited annual financial statements within 90 days of year-end.

## **5. CAPACITY TO PERFORM REGULATORY FUNCTIONS**

RS Inc. maintains its ability to perform its regulation functions including setting requirements governing the conduct of ATs and their subscribers, monitoring and enforcing requirements for all marketplaces and their participants, and disciplining marketplaces and marketplace participants.

### **Recognition Order Terms and Conditions:**

RS Inc. will comply with the recognition criteria with respect to capacity to perform regulatory functions and, in particular, will

- (a) provide the Commission with an annual report in such form as may be specified by the Commission from time to time, and with such information regarding its affairs as may be requested from time to time;
- (b) not, without prior Commission approval, make significant changes to the organizational structure of RS Inc. or its ability to perform its regulatory functions;
- (c) have the necessary financial, technological and other resources to efficiently and effectively regulate marketplaces and their participants;
- (d) adopt and use all reasonable efforts to comply with policies and procedures designed to ensure that confidential information relating to its operations or to any marketplace or any marketplace participants is maintained in confidence and not shared inappropriately with other persons;
- (e) promptly report to the Commission misconduct or apparent misconduct by marketplaces or marketplace participants and others where investors, marketplaces or marketplace participants or their customers, or RS Inc. may reasonably be expected to suffer serious damage as a consequence thereof, RS Inc. has a reasonable apprehension that fraud may be present or there may exist material deficiencies in supervision or internal controls;
- (f) notify the public and media by way of press release and by posting on its website any disciplinary or settlement hearing not less than 10 days prior to the date of any such hearing, and promptly notify the public and media of the disposition of all disciplinary actions by way of press release and posting on its website;
- (g) ensure that disciplinary and settlement hearings are open to the public and media except where required for the protection of confidential matters;
- (h) notify the Commission on a monthly basis of: (i) all new investigations initiated by RS Inc., including the persons involved and the nature of the investigation; (ii) all investigations which do not lead to disciplinary proceedings and which are closed, including the date the investigation started, the conduct and persons involved and the disposition of the investigation; and (iii) all investigations that lead to disciplinary proceedings.
- (i) provide information with respect to its operations to the Commission upon request;



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| <ul style="list-style-type: none"><li>(j) maintain its ability to perform its regulation functions and advise the Commission at least annually of its staff complement, by function and location, and of any material changes or reductions in staff, by function and location; and</li><li>(k) report to the Commission within 12 months of beginning operations on how it has fulfilled these terms and conditions in a form satisfactory to the Commission.</li></ul> |
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## **6. CAPACITY AND INTEGRITY OF SYSTEMS**

RS Inc.'s systems, capacity and integrity requirements provide that it:

- (a) on a reasonably frequent basis, and in any event, at least annually,
  - (i) makes reasonable current and future capacity estimates;
  - (ii) conducts capacity stress tests of critical systems to determine the ability of those systems to monitor transactions in an accurate, timely and efficient manner;
  - (iii) develops and implements reasonable procedures to review and keep current the development and testing methodology of those systems;
  - (iv) reviews the vulnerability of those systems and data centre computer operations to internal and external threats including physical hazards and natural disasters; and
  - (v) establishes reasonable contingency and business continuity plans;
- (b) annually, causes to be performed an independent review and prepares a report, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (a) above, and ensures that senior management conducts a review of the report containing the recommendations and conclusions of the independent review; and
- (c) promptly notifies the Commission of material systems failures and changes.

<b>Recognition Order Term and Condition:</b>
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RS Inc. will comply with the recognition criteria with respect to capacity and integrity of systems.
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## **7. PURPOSE OF RULES**

- (a) The rules, policies, or other similar instruments ("Rules") of RS Inc. are designed to:
  - (i) ensure compliance with securities legislation;
  - (ii) prevent fraudulent and manipulative acts and practices;

- (iii) promote just and equitable principles of trade;
  - (iv) foster cooperation and coordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities; and
  - (v) provide for appropriate discipline.
- (b) The Rules of RS Inc. do not:
- (i) permit unreasonable discrimination between those granted access to the regulation services of RS Inc.; or
  - (ii) impose any burden on competition that is not necessary or appropriate in furtherance of securities legislation.
- (c) The Rules of RS Inc. ensure that its business is conducted in an orderly manner so as to afford protection to investors.

**Recognition Order Term and Condition:**

RS Inc. will, subject to the terms and conditions of this recognition order and the jurisdiction and oversight of the Commission in accordance with securities laws, establish such Rules as are necessary or appropriate to govern and regulate all aspects of its business and affairs and will, in so doing, specifically govern and regulate as to comply with securities laws and this recognition criteria.

**8. RULES AND RULE-MAKING**

All Rules and amendments thereto adopted by the Board must be filed with the Commission. The details in respect of the approval of rule proposals may be set out in rule review procedures established by the Commission and other recognizing regulators.

**Recognition Order Terms and Conditions:**

RS Inc. will comply with the recognition criteria with respect to rules and rule-making and, in particular, will:

- (a) administer and enforce the UMIRs for marketplaces for which RS Inc. acts as the regulation services provider as well as any other rules of a marketplace as agreed to between RS Inc. and that marketplace; and
- (b) submit, on its own behalf and on behalf of the exchanges that contract with it for regulation services, any proposal for the amendment of the UMIRs to the Commission for review in accordance with rule review procedures established by the Commission and other recognizing regulators, as may be amended from time to time.

**9. FINANCIAL STATEMENTS**

RS Inc. will prepare annual audited financial statements, in accordance with Canadian GAAP and covered by a report prepared by an independent auditor, within 90 days after the end of its latest financial year.

**Recognition Order Term and Condition:**

RS Inc. will comply with the recognition criteria with respect to financial statements.

**10. DISCIPLINE RULES**

RS Inc. has the authority and rules that provide that persons or companies granted access to its regulation services and any other persons or companies over which RS Inc. has authority such as those formerly granted access to a marketplace that is now being regulated by RS Inc. are appropriately disciplined for violations of securities legislation and these rules.

**Recognition Order Term and Condition:**

RS Inc. will comply with the recognition criteria with respect to discipline rules and, in particular, will incorporate general disciplinary and enforcement rules in the UMIRs which will govern any marketplace that contracts with RS Inc. to carry out these functions and the participants in that marketplace.

**11. DUE PROCESS**

In connection with giving access to its facilities, RS Inc. will ensure that:

- (a) its requirements, the limitations or conditions it imposes on access, and the decisions it makes to deny access are fair and reasonable;
- (b) the parties are given notice and an opportunity to be heard or make representations;  
and
- (c) it keeps a record, gives reasons and provides for appeals of its decisions.

**Recognition Order Term and Condition:**

RS Inc. will comply with the recognition criteria with respect to due process.

## **12. INFORMATION SHARING**

RS Inc. is able and willing to co-operate, by the sharing of information and otherwise, with the Commission and its staff and other Canadian regulatory authorities, other regulation services providers, and other recognized self-regulatory organizations.

### **Recognition Order Term and Condition:**

RS Inc. will comply with the recognition criteria with respect to information sharing.

## **13. ADDITIONAL INFORMATION & COMPLIANCE WITH OVERSIGHT**

RS Inc. has provided any additional information, as may be required from time to time.

### **Recognition Order Term and Condition:**

RS Inc. will file the information required in Appendix B of the Memorandum of Understanding for the oversight of RS Inc. among the regulators recognizing RS Inc.

- (a) The information will be filed with its application for recognition. If that information changes before RS Inc. is recognized, RS Inc. will immediately advise the Commission in writing and file an amendment to the information it has already provided within seven days of the change taking place.
- (b) The information will be filed within the time periods set out below, if it makes a change to the information it has already filed:
  - (i) if the change is significant, at least 45 days before making the change;
  - (ii) if the change is not significant, within 30 days after the end of the calendar quarter in which the change takes place.
- (c) Any changes to the Exhibits A, B, D, F, H, I and K of Appendix B are significant changes. For greater certainty, any change to a Rule does not require a filing under Appendix B.

## **APPENDIX A JOINT RULE PROTOCOL**

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 \* .



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., and for any person or company with whom 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 J<sup>1</sup>** 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.**

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<sup>1</sup> For the initial filing, future oriented financial information should be provided instead of the information specified in Exhibit J.

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]

MEMORANDUM OF UNDERSTANDING REGARDING OVERSIGHT OF MARKET  
REGULATION SERVICES INC.<sup>1</sup>

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.

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<sup>1</sup> The memorandum of understanding will generally take the form set out below.

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

## 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 \* .