

13.1.4 Proposed Criteria for recognition with terms and conditions

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;
- (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
- (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.

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.

Recognition Order Term and Condition:

RS Inc. will comply with the recognition criteria with respect to capacity and integrity of systems.

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.