

13.1.3 RS Market Integrity Notice – Request for Comments – Definition of “Applicable Market Display”

REQUEST FOR COMMENTS

DEFINITION OF “APPLICABLE MARKET DISPLAY”

Summary

On May 24, 2005, the Board of Directors of Market Regulation Services Inc. (“RS”) approved an amendment to the Rules and Policies under the Universal Market Integrity Rules (“UMIR”) to replace the definition of a “consolidated market display” with the term “applicable market display”. The definition of “applicable market display”:

- eliminates the requirement that the consolidated feed produced by an information processor or the information on orders and trades produced by an information vendor must contain information from the “principal market” for a particular security; and
- provides that, if there is not an information processor, information provided by an information vendor may be relied upon as an “applicable market display” only if the information vendor meets the standards established by a Market Regulator.

Rule-Making Process

RS has been recognized as a self-regulatory organization by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and, in Quebec, by the Autorité des marchés financiers (the “Recognizing Regulators”) and, as such, is authorized to be a regulation services provider for the purposes of the National Instrument 21-101 (“Marketplace Operation Instrument”) and National Instrument 23-101.

As a regulation services provider, RS will administer and enforce trading rules for the marketplaces that retain the services of RS. RS has adopted, and the Recognizing Regulators have approved, UMIR as the integrity trading rules that will apply in any marketplace that retains RS as its regulation services provider. Presently, RS has been retained to be the regulation services provider for: the Toronto Stock Exchange (“TSX”), TSX Venture Exchange (“TSX V”) and Canadian Trading and Quotation System, each as a recognized exchange (an “Exchange”); and for Bloomberg Tradebook Canada Company, Liquidnet Canada Inc. and Markets Securities Inc., each as an alternative trading system (an “ATS”).

The Rules Advisory Committee of RS (“RAC”) reviewed the proposed amendment to the definition of a “consolidated market display” and recommended its adoption by the Board of Directors. RAC is an advisory committee comprised of representatives of each of: the marketplaces for which RS acts as a regulation services provider; Participants; institutional investors and subscribers; and the legal and compliance community.

The amendment to UMIR will be effective upon approval of the changes by the Recognizing Regulators following public notice and comment. Comments on the proposed amendments should be in writing and delivered by **July 11, 2005** to:

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A copy should also be provided to Recognizing Regulators by forwarding a copy to:

Cindy Petlock
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20 Queen Street West
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Background to the Proposed Amendments

Both the current definition of “consolidated market display” and the proposed definition of “applicable market display” contemplate that there may be multiple data feeds that satisfy the definition. A Participant or Access Person when complying with the provisions of UMIR would be entitled to rely on information respecting orders and trades on marketplaces to which the Participant or Access Person has access that is derived from a source which complies with the definition. There is no requirement that a Participant or Access Person subscribe for data feeds from sources that would provide information on orders or trades from all marketplaces. However, the current definition of a “consolidated market display” requires information on orders and trades from the “principal market” for a particular security. As the concept of “principal market” was removed from the Marketplace Operation Instrument effective January 4, 2004, it is proposed that the concept be removed from UMIR.

The amendments to the Marketplace Operation Instrument also eliminated the requirements for market integration, including the requirement that marketplaces maintain an electronic connection to all other marketplaces trading the same securities. In these circumstances, in order to ensure that the “data feeds” which would be relied upon by a Participant or Access Person would be adequate for that person to discharge its obligations under UMIR (in particular with reference to the “best ask price”, “best bid price” and “last sale price” as disclosed in a consolidated market display), the Marketplace Operation Instrument was amended to provide that the data vendors to which a marketplace provides information on orders and trades must “meet the standards” set by a regulation services provider.

The proposed definition of “applicable market display” is the first step in the establishment by RS of standards for the delivery of information on orders and trades by marketplaces to RS and to information vendors. (See “Establishment of Standards for Information Vendors and for the Regulatory Feed” below.)

Summary of the Proposed Amendment

The proposed definition of “applicable market display” differs from the definition of “consolidated market display” by:

- eliminating the requirement that the consolidated feed produced by an information processor or the information on orders and trades produced by an information vendor contain information on orders or trades for a particular security from the “principal market” for that security; and
- providing that, if there is not an information processor, information provided by an information vendor may be relied upon as a “applicable market display” only if the information vendor meets the standards established by a Market Regulator.

The amendment also clarifies that the relevant information for each Participant or Access Person will be determined by the marketplaces to which the Participant or Access Person has access. A Participant will be required to refer to order and trade information from each:

- Exchange of which they are a member;
- recognized quotation and trade reporting system (“QTRS”) of which they are a user; and
- ATS of which they are a subscriber.

An Access Person will be required to refer to order and trade information from each:

- QTRS of which they are a user;
- ATS of which they are a subscriber; and

- Exchange or QTRS to which they have been granted access rights either directly or by means of an electronic connection to the order routing system of a member or user.

Presently, an Access Person who is a subscriber to an ATS would have to take into consideration relevant order and trade information from:

- the TSX if they have been granted access to the order routing system of a Participant pursuant to TSX Policy 2-501; and
- the TSX V if they have been granted access to the order routing system of a Participant pursuant to the "Direct Access Rules" of the TSX V.

Establishment of Standards for Information Vendors and for the Regulatory Feed

Presently, no entity has applied to be recognized as an "information processor" for the equity marketplace for the purposes of the Marketplace Operation Instrument. As such, each marketplace must provide "accurate and timely information" to an information vendor that "meets the standards set by a regulation services provider" in respect of:

- if the marketplace displays orders, each order for a listed security, a quoted security or foreign exchange-traded security; and
- each trade in a listed security, a quoted security or foreign exchange-traded security.

RS will determine and set certain minimum standards for the data feed from marketplaces to information vendors with respect to the required data elements and with respect to timeliness and operability (the "data feed"). Beyond the required minimums established by the regulation services provider, each marketplace would be free to provide whatever information the marketplace believed supported its competitive position.

In addition, each marketplace that retains a regulation services provider to monitor trading activity on that marketplace must provide information on orders and trades to the regulation services provider (the "regulatory feed"). RS will determine and set a common standard for the regulatory feed provided to RS by each marketplace that has retained RS to be its regulation services provider with respect to:

- the data elements to be provided;
- data integrity; and
- delivery service levels.

In the current environment, a marketplace could provide the regulatory feed and the data feed by:

- delivering the regulatory feed to TSX or another marketplace which would provide it to RS and publicly disseminating order and trade information;
- delivering the regulatory feed to a certified information vendor which would provide it to RS and publicly disseminating order and trade information; or
- directly delivering a data feed to RS for regulatory purposes and separately providing order and trade information to a certified information vendor for public dissemination.

Each regulation services provider will define the process, the business content of the reporting and regulatory data feeds, including the core data elements, the message catalogue and the service level standards. The regulation services provider will also define the service level standards for delivery and receipt of market data to and from information vendors and marketplaces as provided in the Marketplace Operation Instrument. The regulation services provider will identify through a certification process which information vendors meet the standards established by the regulation services provider.

The Canadian Securities Administrators ("CSA") have indicated that if there are multiple regulation service providers, the standards of the various regulation service providers must be consistent. In order to maintain market integrity for securities trading in different marketplaces, the Canadian securities regulatory authorities will, through their oversight of the regulation service providers, review and monitor the standards established by all regulation service providers so that business content, service level standards, and other relevant standards are substantially similar for all regulation service providers. The cost of developing the applicable standards is not known at this time. In addition, the CSA has not indicated who should bear the costs or how they should be recovered (e.g. would each regulation services provider, including RS, be expected to recover the costs

of developing the applicable standards from a fee to be charged to the information vendors as part of the certification process, from the general regulation fee revenue paid by Participants or from other sources).

The report of the Trade Reporting and Electronic Audit Trail Committee ("Treats Committee"), on which the CSA relied in making many of the amendments to the Marketplace Operation Instrument, stated the establishment of the minimum standards for the regulatory feed and market data feed would "ensure that a level playing field is available to all participants regardless of the way in which they receive their data feed". In the view of the Treats Committee, these service level standards would cover issues such as regulatory business content, outage handling, time synchronization against a neutral clock not managed by a marketplace (atomic clock, satellites, etc), latency of delivery, time stamps for each stage of the order, trade execution for audit trail requirements, etc.

RS intends to establish the minimum standards for the regulatory feed and market data feed concurrent with the pursuit of the amendment to the definition of consolidated market display. To assist in the development of these standards, RS is inviting comments at this time not only on the amendment to the definition of consolidated market display outlined in this Market Integrity Notice but also on:

- the subject matter that should be covered by the standards for the regulatory feed and the data feed;
- if appropriate, suggestions on the standard RS should establish; and
- the process RS should adopt for the certification of an information vendor.

Appendices

The text of the amendment to the Rules and Policies respecting the definition of an "applicable market display" is set out in Appendix "A". Appendix "B" contains the text of the relevant provisions of the Rules as they would read on the adoption of the amendment. Appendix "B" also contains a marked version of the current definition of "consolidated market display" indicating the differences to the proposed definition of "applicable market display".

Questions

Questions concerning this notice may be directed to:

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ROSEMARY CHAN,
VICE PRESIDENT, MARKET POLICY AND GENERAL COUNSEL

Appendix "A"

Universal Market Integrity Rules

Proposed Amendments Respecting "Applicable Market Display"

The Universal Market Integrity Rules are amended as follows:

1. Rule 1.1 amended by deleting the definition of "consolidated market display" and inserting the following definition of "applicable market display":

"applicable market display" means, in respect of a particular security, information on orders or trades from each marketplace to which a particular Participant or Access Person has access that has been:

 - (a) produced by an information processor in a timely manner in accordance with Part 14 of the Marketplace Operation Instrument; or
 - (b) if there is no information processor, produced by an information vendor that meets the standards set by a Market Regulator in accordance with Part 7 of the Marketplace Operation Instrument.
2. The Rules are amended by striking out "a consolidated market display" wherever it appears and by substituting "the applicable market display" in every case.

The Policies under the Universal Market Integrity Rules are amended as follows:

1. The Policies are amended by striking out "a consolidated market display" wherever it appears and by substituting "the applicable market display" in every case.

Appendix “B”

Universal Market Integrity Rules

Text of Proposed Definition of “Applicable Market Display” Compared to the Definition of “Consolidated Market Display”

Text of Provisions of Following Adoption of Proposed Amendments	Text of Current Provisions Marked to Reflect Adoption of Proposed Amendments
<p>1.1 Definitions</p> <p>“applicable market display” means, in respect of a particular security, information on orders or trades from each marketplace to which a particular Participant or Access Person has access that has been:</p> <ul style="list-style-type: none"> (a) produced by an information processor in a timely manner in accordance with Part 14 of the Marketplace Operation Instrument; or (b) if there is no information processor, produced by an information vendor that meets the standards set by a Market Regulator in accordance with Part 7 of the Marketplace Operation Instrument. 	<p>1.1 Definitions</p> <p>“<u>applicable consolidated market display</u>” means, in respect of a particular security, <u>information on orders or trades from each marketplace to which a particular Participant or Access Person has access that has been:</u></p> <ul style="list-style-type: none"> (a) the consolidated feed respecting orders and trades produced by an information processor in a timely manner in accordance with <u>Part 14 section 7.3</u> of the Marketplace Operation Instrument provided such consolidated feed includes details of orders and trades from the principal market; or (b) <u>if there is no information processor, information regarding orders and trades on a marketplace produced by an information vendor that meets the standards set by a Market Regulator in accordance with Part 7 of for the purposes of the Marketplace Operation Instrument provided such information includes details of orders and trades from the principal market.</u>