

IN THE MATTER OF THE SECURITIES ACT, S.N.B. 2004, c. S-5.5 (as amended)

- AND -

IN THE MATTER OF

NEW REGCO (New Regco)

RECOGNITION ORDER

The Investment Dealers Association of Canada (the IDA) has been recognized by the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission, Nova Scotia Securities Commission, Ontario Securities Commission, Saskatchewan Financial Services Commission, the Superintendent of Securities for the Province of Newfoundland and Labrador and the Autorité des marchés financiers, and has applied to the New Brunswick Securities Commission for recognition (together, the Recognizing Regulators) as a self-regulatory organization or self-regulating body pursuant to applicable legislation;

Market Regulation Services Inc. (RS) has been recognized by the Autorité des marchés financiers and the Alberta Securities Commission, British Columbia Securities Commission, Manitoba Securities Commission and Ontario Securities Commission as a self-regulatory organization or self-regulatory body pursuant to applicable securities legislation;

The IDA and RS have agreed to combine their operations into New Regco;

New Regco will, among other things:

- a. regulate investment dealers, including alternative trading systems (ATSs) (Dealer Members);
- b. if retained by an ATS pursuant to National Instrument 23-101 *Trading Rules*, regulate the ATS as a Marketplace Member (defined below) and the subscribers of the ATS;
- c. establish and administer its rules, policies and other similar instruments (Rules);
- d. monitor and enforce compliance with its Rules by Dealer Members and ATS subscribers;
- e. provide services to exchanges and quotation and trade reporting systems (QTRSs) (together with ATSs, Marketplace Members) that choose to retain it as a regulation

services provider, as that term is defined under National Instrument 21-101 *Marketplace Operation*;

- f. if retained by an exchange or QTRS, administer, monitor and enforce (as appropriate) rules pursuant to a regulation services agreement between New Regco and that exchange or QTRS (RSA); and
- g. conduct certain functions delegated to it by Recognizing Regulators, including registration functions.

New Regco has applied to the New Brunswick Securities Commission (Commission) and the other Recognizing Regulators for recognition as a self-regulatory organization pursuant to paragraph 35(1)(b) of the *Securities Act* (the Act);

Based on the application filed on behalf of New Regco with the Recognizing Regulators and subject to the representations and undertakings made by New Regco, the Commission is satisfied that recognizing New Regco will not be prejudicial to the public interest;

The Commission recognizes New Regco as a self-regulatory organization pursuant to paragraph 35(1)(b) of the Act on the terms and conditions set out in the appendix to this recognition order and the applicable provisions of the Memorandum of Understanding between the Recognizing Regulators dated ■ , as amended from time to time (MOU).

APPENDIX A

TERMS AND CONDITIONS

1. Recognition Criteria

New Regco must continue to meet the criteria attached at Schedule 1.

2. Notice and/or Approval of Changes

- a. New Regco must promptly file in writing with Commission staff any material change to the information set out in the application dated December 21, 2007.
- b. Prior Commission approval is required for any changes to the following:
 - (i) the corporate governance structure of New Regco, as reflected in New Regco's By-law No. 1 (By-law No. 1);
 - (ii) letters patent of New Regco, and any supplementary letters patent; and
 - (iii) the assignment, transfer, delegation or sub-contracting of the performance of all or a substantial part of its regulatory functions or responsibilities as a self-regulatory organization.
- c. Prior Commission approval is required for material changes to the following:
 - (i) the fee model;
 - (ii) the functions New Regco performs;
 - (iii) New Regco's organizational structure;
 - (iv) the activities, responsibilities, and authority of the District Councils;
 - (v) the Regulation Services Agreement between New Regco and any Marketplace Member; and
 - (vi) the agreement between New Regco and its information technology service provider.

- d. New Regco must not, without providing the Commission at least six months prior written notice and complying with any terms and conditions the Commission may impose in the public interest, complete any transaction that would result in New Regco:
 - (i) ceasing to perform its services;
 - (ii) discontinuing, suspending or winding-up all or a significant portion of its operations; or
 - (iii) disposing of all or substantially all of its assets.
- e. New Regco will comply with the process for filing and obtaining Commission approval for by-laws, Rules and any amendments to by-laws or Rules as outlined in Appendix A of the MOU, as amended from time to time.
- f. New Regco must advise the Commission in writing immediately upon being notified by any of the Recognizing Regulators that New Regco is not in compliance with one or more of the terms and conditions of recognition of New Regco in any jurisdiction or with the reporting requirements set out in the MOU.

3. Governance

- a. New Regco must:
 - (i) ensure that at least 50% of its board of directors (Board), other than the President of New Regco, are independent directors as defined in By-law No. 1;
 - (ii) ensure that one of the directors represents an exchange or ATS that is not affiliated with a marketplace
 - (A) that retains New Regco, and
 - (B) has at least a 40% Market Share as defined in By-law No. 1 (Market Share); and
 - (iii) review the corporate governance structure, including the composition of the Board,
 - (A) within two years after the date of recognition and periodically thereafter, or
 - (B) at the request of the Commission,

to ensure that there is a proper balance between, and effective representation of, the public interest and the interests of marketplaces, dealers and other entities desiring access to the services provided by New Regco.

- b. New Regco must report to Commission staff in writing the results of the corporate governance review referred to in subparagraph (a)(iii) upon completion.
- c. The Code of Business Ethics and Conduct and the written policy about managing potential conflicts of interests of members of New Regco's Board must be filed with the Recognizing Regulators within one year after the date of this Recognition Order.

4. Fees

- a. New Regco must develop an integrated fee model and submit it for approval with the Commission within two years of the date of the recognition order.
- b. New Regco must report in writing on a quarterly basis for the first two years of operations on the status of the development of the fee model.

5. Due Process

Subject to applicable law and the Rules and by-laws of New Regco, before rendering a decision that affects the rights of a person or company in relation to membership, registration or enforcement matters, New Regco must provide that person or company an opportunity to be heard.

6. Financial Viability

- a. New Regco must operate on a not-for-profit basis.
- b. New Regco will immediately report to Commission staff if its revenues for the next quarter will not meet its expenses in that quarter. In addition, New Regco must provide Commission staff with an action plan detailing the steps to be taken to remedy its financial condition.

7. Integration of Functions

- a. New Regco must report in writing within six months of the date of the recognition order its plan and timelines for the integration of functions relating to policy, surveillance, compliance, investigations, enforcement and membership.

- b. New Regco must report in writing on a quarterly basis for the first two years of operations on the status of the integration of its functions.

8. Performance of Regulatory Functions

- a. New Regco must set Rules governing its members and others subject to its jurisdiction and will administer those Rules and Market Rules.
- b. New Regco must administer, monitor and enforce compliance with the Rules and monitor compliance with securities laws by Dealer Members, including ATSSs, and ATS subscribers. In addition, New Regco will provide notice to the Commission of any violations of securities legislation of which it becomes aware.
- c. If retained by an exchange or QTRS, New Regco must administer, monitor and enforce (as appropriate) rules pursuant to an RSA.
- d. New Regco must, subject to applicable legislation, collect, use and disclose personal information only to the extent reasonably necessary to carry out its regulatory activities and mandate.
- e. New Regco must ensure that it is accessible for contact by the public for purposes relating to the performance of its functions as a self-regulatory organization/body.
- f. New Regco must publish concurrently in English and French each document issued to the public at large or generally to any class of members and must provide the document to Commission staff immediately upon publication.
- g. New Regco must adopt policies and procedures designed to ensure that confidential information about its operations or those of any Dealer Member, Marketplace Member or marketplace participant is maintained in confidence and not shared inappropriately with other persons, and must use all reasonable efforts to comply with these policies and procedures.

9. Use of Fines and Settlements

All fines collected by New Regco and all payments made under settlement agreements entered into with New Regco may be used as follows:

- a. as approved by the Corporate Governance Committee,
 - (i) for the development of systems or other non-recurring capital expenditures that are necessary to address emerging regulatory issues resulting from changing

market conditions and are directly related to protecting investors and the integrity of the capital markets;

- (ii) for the education of securities market participants and members of the public about or research into investing, financial matters or the operation or regulation of securities markets;
- (iii) to contribute to a non-profit, tax-exempt organization, the purposes of which include protection of investors, or those described in paragraph (a)(ii); or

b. for reasonable costs associated with the administration of New Regco's hearing panels.

10. Disciplinary Matters

a. Subject to paragraph (b), New Regco must

- (i) promptly notify the Commission, the public and the news media of:
 - (A) the specifics relating to each disciplinary or settlement hearing once the hearing date is set, and
 - (B) the terms of each settlement and the disposition of each disciplinary action once the terms or disposition is determined; and
- (ii) ensure that disciplinary and settlement hearings are open to the public and news media.

b. Despite paragraph (a), New Regco may, on its own initiative or on request, order a closed-door hearing or prohibit the publication or release of information or documents if it determines that it is required for the protection of confidential matters. New Regco must establish written criteria for making a determination of confidentiality/AMF order – “interest of good morals or public order”.

11. Capacity and Integrity of Systems

a. New Regco must

- (i) ensure that each of New Regco's critical systems, including its technology systems, has

- A. appropriate internal controls to ensure integrity and security of information; and
 - B. has reasonable and sufficient capacity, and backup to enable New Regco to properly carry on its business.
 - (ii) have controls to manage the risks associated with its operations, including an annual review of its contingency and business continuity plans.
- b. New Regco must promptly report to the Commission:
- (i) any material failures in the controls described in paragraphs (a)(i) and (ii) above; and
 - (ii) any outage in New Regco's critical technology systems or backup systems,
- and provide a description of the actions taken or to be taken to rectify the situation.
- c. New Regco will on a reasonably frequent basis, and in any event, at least annually:
- (i) make reasonable current and future capacity estimates for its critical systems;
 - (ii) conduct capacity stress tests to determine the ability of its critical systems to perform its regulation functions in an accurate, timely and efficient manner;
 - (iii) review and keep current the development and testing methodology of those systems; and
 - (iv) review the vulnerability of those systems to internal and external threats including physical hazards and natural disasters.
- d. New Regco must cause to be performed an independent review, in accordance with established audit procedures and standards, of its controls for ensuring that it is in compliance with paragraph (c) above, and conduct a review by its Board of the report containing the recommendations and conclusions of the independent review. This term and condition will not apply if:
- (i) the information technology provider retained by New Regco is required, either by law or otherwise, to conduct an annual independent review; and
 - (ii) New Regco's Board obtains and reviews annually a copy of the independent review report of its information technology provider to ensure that it has controls in place to address the matters outlined in paragraph (c) above.

- e. Upon completion of the Board review, New Regco must provide the Commission with a copy of the report prepared under paragraph (d).
- f. New Regco shall periodically benchmark surveillance systems and services provided by its information technology provider against comparable systems and services available from other third party technology providers and provide the Commissions with a report summarizing the process undertaken and the conclusions reached.

12. Ongoing Reporting Requirements

- a. New Regco must provide the Commission with all information required in Schedule 2 of this recognition order.
- b. New Regco must provide Commission staff within 30 days of the commencement of each fiscal year with a copy of its financial budget for that year, together with the underlying assumptions, that has been approved by its Board.
- c. New Regco must file annual audited financial statements with Commission staff, accompanied by the report of an independent auditor, within 90 days after the end of each fiscal year.
- d. New Regco must file with Commission staff quarterly financial statements for each of the first three financial quarters within 60 days after the end of each financial quarter.
- e. New Regco must file its annual report with Commission staff upon completion.
- f. New Regco must annually self-assess New Regco's performance of its regulatory responsibilities and report thereon to the Board and the Commission staff, together with any recommendations for improvements. The annual self-assessment must contain information as specified by Commission staff from time to time and include the following information:
 - (i) an assessment of how New Regco is meeting its regulatory mandate, including an assessment against the recognition criteria and the terms and conditions of the recognition order;
 - (ii) an assessment against its strategic plan;
 - (iii) a description of trends seen as a result of compliance reviews conducted and complaints received and New Regco's plan to deal with any issues;

- (iv) whether New Regco is meeting its benchmarks and if not, why not; and
- (v) a description and update on significant projects undertaken by New Regco.

New Regco must file the self-assessment with the Commission within 90 days of its fiscal year-end.

- g. New Regco must give the Commission staff notice as soon as practicable of new directors.
- h. New Regco must provide to the Commission, in addition to the information specifically required in this Recognition Order and the MOU, any information the Commission may reasonably require from time to time.

SCHEDULE 1

CRITERIA FOR RECOGNITION IDA/RS MERGED ENTITY

1. Governance

- a. The governance structure and arrangements must ensure:
 - (i) effective oversight of the entity;
 - (ii) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;
 - (iii) a proper balance among the interests of the different persons or companies subject to regulation by New Regco; and
 - (iv) each director or officer is a fit and proper person.

2. Public Interest

New Regco must regulate to serve the public interest in protecting investors and market integrity. It must articulate and ensure it meets a clear public interest mandate for its regulatory functions.

3. Conflicts of interest

New Regco must effectively identify and manage conflicts of interest.

4. Fees

- a. All fees imposed by New Regco must be equitably allocated. Fees must not have the effect of creating unreasonable barriers to access.
- b. The process for setting fees must be fair and transparent.
- c. New Regco must operate on a cost-recovery basis.

5. Access

- a. New Regco must have reasonable written criteria that permit all persons or companies that satisfy the criteria to access New Regco's regulatory services.
- b. The access criteria and the process for obtaining access should be fair and transparent.

6. Financial Viability

New Regco must have sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

7. Capacity to Perform Regulatory Functions

- a. New Regco must maintain its capacity to effectively and efficiently perform its regulation functions, which include governing the conduct of persons or companies subject to its regulation and monitoring and enforcing applicable requirements.
- b. New Regco must maintain in each jurisdiction where it has an office
 - (i) sufficient financial, technological, human and other resources; and
 - (ii) appropriate organizational structures and adequate technological systemsto efficiently, effectively and in a timely manner perform its regulatory functions and responsibilities.

8. Capacity and Integrity of Systems

New Regco must maintain controls to ensure capacity, integrity requirements and security of its technology systems.

9. Rules

- a. New Regco must establish and maintain Rules that:
 - (i) are necessary or appropriate to govern and regulate all aspects of its functions and responsibilities as a self-regulatory entity;
 - (ii) are designed to:
 - (A) ensure compliance with securities laws,
 - (B) prevent fraudulent and manipulative acts and practices,
 - (C) promote just and equitable principles of trade and the duty to act fairly, honestly and in good faith,
 - (D) foster cooperation and coordination with entities engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities,
 - (E) foster fair, equitable and ethical business standards and practices,
 - (F) promote the protection of investors, and
 - (G) provide for appropriate discipline of those whose conduct it regulates;
 - (iii) do not impose any burden or constraint on competition or innovation that is not necessary or appropriate in furtherance of New Regco's regulatory objectives;
 - (iv) do not impose costs or restrictions on the activities of market participants that are disproportionate to the goals of the regulatory objectives sought to be realized; and

(v) are not contrary to the public interest.

10. Disciplinary Matters

The process for discipline must be fair and transparent.

11. Information Sharing and Regulatory Cooperation

To assist other regulatory authorities in regulatory matters, New Regco must share information and cooperate with:

- (a) the Commission and any other securities regulatory authority, whether domestic or foreign;
- (b) exchanges;
- (c) self-regulatory organizations;
- (d) clearing agencies;
- (e) financial intelligence or law enforcement agencies or authorities;
- (f) investor protection or compensation funds, whether domestic or foreign

This assistance includes the collection and sharing of information and other forms of assistance for the purpose of market surveillance, investigations, enforcement litigation, investor protection and compensation and for any other regulatory purpose and is subject to applicable laws related to information sharing and protection of personal information.

12. Other Criteria – Québec

Constituting documents, by-laws and operating rules of New Regco should allow that the power to make decisions relating to the supervision of its activities in Québec will be exercised mainly by persons residing in Québec.

SCHEDULE 2
REPORTING REQUIREMENTS

[This schedule will contain reporting requirements.]