

13.2.2 TSX Inc. et al.

TSX INC.
ALPHA EXCHANGE INC.
TMX SELECT INC.
CNSX MARKETS INC.

NOTICE OF ONTARIO SECURITIES COMMISSION APPROVAL OF PROPOSED CHANGES

AMENDMENTS TO THE TRADING RULES OF THE
TORONTO STOCK EXCHANGE, ALPHA EXCHANGE, CNSX AND THE POLICIES OF TMX SELECT
TO ADD AN ADDITIONAL CLASS OF ENTITIES TO THE PRESCRIBED CLASSES OF ENTITIES
ELIGIBLE TO TRANSMIT ORDERS USING DIRECT ELECTRONIC ACCESS

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits thereto (Exchange Protocol) for recognized exchanges, the Ontario Securities Commission (OSC) has approved amendments to the Rules of the Toronto Stock Exchange (TSX Rules) which are attached at **Appendix A**, amendments to the Trading Policies of Alpha Exchange Inc. (Alpha Rules) which are attached at **Appendix B** and amendments to the Rules of CNSX Markets Inc. (CNSX Rules) which are attached at **Appendix D**.

The OSC has also approved amendments to TMX Select's (TMX Select) Trading Policy Manual (TMX Select Policies) which are attached at **Appendix C**, in accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits thereto (ATS Protocol) for alternative trading systems.

The amendments to the TSX Rules, Alpha Rules, CNSX Rules and TMX Select Policies are collectively referred to as the "Amendments".

The Amendments are public interest amendments. In accordance with the Exchange Protocol, TSX Inc. (TSX), Alpha Exchange Inc. (Alpha), CNSX Markets Inc. (CNSX) and TMX Select Inc. (TMX Select) have each requested and received a waiver of the requirement to publish the Amendments for public comment. A similar waiver was requested and granted to TMX Select in accordance with the ATS Protocol. The OSC granted these waivers on the basis that the proposed Amendments would be in line with recently approved amendments to National Instrument 23-103 *Electronic Trading and Direct Electronic Access to Marketplaces* (NI 23-103) that were previously published for comment on October 25, 2012 at (2012) 35 OSCB 9627.

Reasons for the Amendments

The CSA have finalized amendments to NI 23-103 that relate to the offer and use of direct electronic access (DEA) which will come into effect on March 1, 2014. These amendments do not set out an "eligible client list" that imposes specific financial standards upon DEA clients as found in the current DEA rules and policies at the marketplace level. Rather the amendments allow a dealer providing DEA to have flexibility to determine the specific levels of the minimum standards of DEA clients in order to accommodate its business model and appetite for risk. This approach is in keeping with global standards related to DEA. The Amendments are also consistent with the requirement in section 4.7 of NI 23-103 that sets out the parameters under which entities that trade for the account of another person or company may receive DEA from a participant dealer.

As the amendments to NI 23-103 will not be in place until March 1, 2014, requests from the dealer member community have been made to various marketplaces to expand the list of eligible categories to accommodate potential DEA clients that do not currently qualify under the existing regime, but will qualify under the amendments to NI 23-103 once they come into effect.

We note that marketplaces must revoke their rules or policies related to DEA upon implementation of the amendments to NI 23-103 on March 1, 2014.

Effect of the Amendments

In general, the Amendments will provide for a new category of DEA client. Specifically, this client would be a non-individual that has a total amount of securities under administration or management that exceeds \$10 million, that carries on business in a foreign jurisdiction and may trade under the laws of the foreign jurisdiction for the account of another person or company using DEA and is regulated in the foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding.

This new category will expand the category of entities that are eligible to use DEA but is consistent with the requirements set out in NI 23-103.

Text of the Amendments

The Amendments are attached in blackline at **Appendix A** for TSX, **Appendix B** for Alpha, **Appendix C** for TMX Select and **Appendix D** for CNSX.

Effective Date of the Amendments

The Amendments will become effective on September 30, 2013.

Appendix A

TSX Trading Rules

2-501 Designation of Eligible Clients

The Exchange may from time to time prescribe classes of entities as eligible to transmit orders to the Exchange through a Participating Organization.

1) Prescribed Classes of Entities

For the purposes of Rule 2-501, the following classes of entities are prescribed as eligible to transmit orders to the Exchange through a Participating Organization:

- a) a client that falls within the definition of “acceptable counterparties” or “acceptable institutions” as defined in the General Notes and Definitions section of the Joint Regulatory Financial Questionnaire and Report;
- b) a client that is registered as an investment counsellor or portfolio manager under the *Securities Act* of one or more of the Provinces of Canada;

[...]

- h) a client that is a bank as defined in section 3(a)(2) of the U.S. Securities Act of 1933, or any savings and loan institution or other institution as referenced in section 3(a)(5)(A) of the U.S. Securities Act of 1933, acting for its own account or the accounts of other Qualified Institutions, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million;
- i) a client that is a non-individual with total securities under administration or management exceeding \$10 million, where the client is resident in a jurisdiction that falls within the definition of “Basle Accord Countries” as defined in the General Notes and Definitions section of the Joint Regulatory Financial Questionnaire and Report; ~~and~~
- j) a client that enters an order through an Order-Execution Account; and
- k) a client that is: (i) a non-individual; (ii) with total securities under administration or management exceeding \$10 million; and (iii) carries on business in a foreign jurisdiction and may trade under the laws of the foreign jurisdiction for the account of another person or company using direct market access and is regulated in the foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding

Appendix B

Alpha Trading Policies

DMA Eligible Client

A DMA Eligible Client is a client of a Sponsoring Member to which it provides sponsored access to Alpha Systems and that is :

- (1) A client that falls within the definition of “acceptable counterparties” or “acceptable institutions” or “regulated entities” as defined in the General Notes and Definitions section of the Joint Regulatory Financial Questionnaire and Report.
- (2) A client that is registered as a portfolio manager under the Securities Act of one or more of the Provinces of Canada.
- [...]
- (7) A client, all of the equity owners of which are Eligible Clients, acting for its own account or the accounts of other Eligible Clients.
- (8) A client that is not an individual, with total securities under administration or management exceeding \$10 million, where the client is a resident in a Basel Accord country as defined in the General Notes and Definitions section of the Joint Regulatory Financial Questionnaire and Report.
- (9) A client that is a bank as defined in section 3(a)(2) of the U.S. Securities Act of 1933, or any savings and loan institution or other institution as referenced in section 3(a)(5)(A) of the U.S. Securities Act of 1933, acting for its own account or the accounts of other Eligible Clients, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million.
- (10) A client that is: (i) a non-individual; (ii) with total securities under administration or management exceeding \$10 million; and (iii) carries on business in a foreign jurisdiction and may trade under the laws of the foreign jurisdiction for the account of another person or company using direct market access and is regulated in the foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding

Appendix C

TMX Select Trading Policies

5.1 Designation of Eligible Clients

- (a) TMX Select may from time to time prescribe classes of entities as eligible to transmit orders electronically to the trading system through a Subscriber.
- (b) Prescribed Classes of Entities

For the purposes of section 5.1(1), the following classes of entities are prescribed as eligible to transmit orders to TMX Select through a Subscriber:

- (i) a client that falls within the definition of “acceptable counterparties” or “acceptable institutions” as defined in the General Notes and Definitions section of the IIROC Joint Regulatory Financial Questionnaire and Report;
- (ii) a client that is registered as an investment counsellor or portfolio manager under the Securities Act of one or more of the Provinces of Canada;

[...]

- (iii) a client that is a bank as defined in section 3(a)(2) of the *U.S. Securities Act of 1933*, or any savings and loan institution or other institution as referenced in section 3(a)(5)(A) of the *U.S. Securities Act of 1933*, acting for its own account or the accounts of other qualified institutions, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million;
- (iv) a client that is a non-individual and not resident in Canada with total securities under administration or management exceeding \$10 million, where the client is resident in a jurisdiction that falls within the definition of “Basle Accord Countries” as defined in the General Notes and Definitions section of the Joint Regulatory Financial Questionnaire and Report; ~~and~~
- (v) a client that enters an order through an Order Execution Account; and
- (vi) a client that is: (i) a non-individual; (ii) with total securities under administration or management exceeding \$10 million; and (iii) carries on business in a foreign jurisdiction and may trade under the laws of the foreign jurisdiction for the account of another person or company using direct market access and is regulated in the foreign jurisdiction by a signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding

Appendix D

CNSX Rules

12-101 Eligibility Requirements

(1) In this Rule,

“eligible client” means

- (a) a client that falls within the definition of “acceptable counterparties” or “acceptable institutions” as defined in the General Notes and Definitions section of the Joint Regulatory Financial Questionnaire and Report;

[...]

- (i) a client that is a non-individual with total securities under administration or management exceeding \$10 million, where the client is resident in a jurisdiction that falls within the definition of “Basle Accord Countries” as defined in the General Notes and Definitions section of the Joint Regulatory Financial Questionnaire and Report; ~~and~~

- (j) a client that enters an order through an order execution account; and an “order execution account” is a client account in respect of which a CNSX Dealer is exempted, in whole or in part, from making a determination on the suitability of trades for the client in accordance with the requirements of a securities regulatory authority of a recognized self regulatory organization; and

- (k) a client that is a non-individual with total securities under administration or management exceeding \$10 million, where the client carries on business in a foreign jurisdiction and may trade under the laws of the foreign jurisdiction for the account of another person or company using direct market access and is regulated in the foreign jurisdiction by a signatory of the International Organization of Securities Commissions’ Multilateral Memorandum of Understanding.